

Church Lane, Sholden: document analysis

Application to record a restricted byway from St Nicholas' Church to Garden Close, Sholden

I. Introduction

A. Quick reference

A.1. Location plan (see application map at part II below for scale representation):



A.2. Existing recorded public rights of way comprised in application way: ED56

- A.3. Parishes of: Sholden, Deal
- A.4. Ancient parishes of: Sholden, Deal
- A.5. Termination points: London Road, Sholden adjacent St Nicholas' Church, and junction of Church Lane with Garden Close and Grantham Avenue, Sholden
- A.6. Termination points Ordnance Survey grid references: TR35925214, TR36275235
- A.7. Postcode: CT14 9SJ
- A.8. Ordnance Survey Explorer sheet: 150
- A.9. Ordnance Survey County Series 25" sheet: Kent LVIII/4

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer historical researcher in relation to South and East Kent. I am a member of the Institute of Public Rights of Way and Access Management. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to Church Lane, a way from London Road, Sholden adjacent St Nicholas' Church, to its junction with Garden Close and Grantham Avenue, where it continues as an ordinary street of the same name. It forms the parish boundary between Sholden and Deal. The way is currently recorded on the definitive map and statement as footpath ED56. The application seeks to record the way as a restricted byway.

D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(ii) that a way shown in the definitive map and statement as a footpath should instead be shown as a restricted byway.

D.2. The way begins at London Road, Sholden, at a cross roads with Mongeham Road adjacent to St Nicholas' Church at A (Ordnance Survey grid reference TR35925214), in a northeasterly direction along an enclosed route, tarred to the width of a footpath, for 415m, to an end-on junction with the continuation of Church Lane at its junction with Garden Close and Grantham Avenue at B (TR36275235).

D.3. The points A and B are identified in the application map at part II below.

E. Nomenclature

E.1. The application way has long been known as Church Lane: it is referred to in this application as the 'application way'. However, Church Lane continues northeast as a residential road as far as its junction with Southwall Road.

- E.2. The church on the corner of Church Lane and London Road is St Nicholas’.
- E.3. Orchard Avenue (linking Church Lane, east of B, to Middle Deal Road) was formerly known as Gun Lane (but substantially widened by opening the lane out on its western side). Court Lodge Farm was located on Church Lane towards the junction with Southwall Road, east of the present junction with Hyton Drive, at TR36655261.
- E.4. London Road, passing A, is the line of the former Sandwich, Deal and Dover turnpike. The line of London Road either side of A was constructed around 1797, soon after the turnpike was authorised — see Dover, Deal and Sandwich turnpike (item IV.D below). Prior to that date, a short part of the western end of Church Lane — approximately that part alongside the southern boundary of St Nicholas’ church — formed the road between Deal and Sholden, and provided one option for traffic between Deal and Sandwich (via How Wall, Finglesham and Ham).¹

F. Background

F.1. The application way appears historically to be a minor road between the village of Sholden, Deal and the marshes north of Deal. There is evidence that it was narrow, and lacked a separate footway for pedestrians: for much of the twentieth century, a separate footpath ran parallel to the application way through the field to the north of the road, and there is reference to a suggestion that this footpath be added into the road by the adjoining landowner at paras.IV.K.24 to K.25 below. The lower end, nearer Deal, was first to be developed with new housing, including both villas and terraced cottages; the upper end, nearer St Nicholas’, has been developed only recently, and even then, vehicular access is not taken from Church Lane. There are now plans, granted planning permission, for development at Sholden Fields, north of the application way next St Nicholas’ church. But it is clear from the evidence that Church Lane has long been regarded as a public vehicular highway.

F.2. As regards the western end of the application way, in the vicinity of St Nicholas’ church, the way — until the end of the eighteenth century — formed the road out of Upper Deal to Sholden village, and beyond to Cottington, How Wall, Finglesham and Sandwich. It was supplanted, in that function, by the construction of a new, more direct, turnpike road (now London Road): see para.E.4 above and item IV.D below.

G. Grounds for application

G.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*², Lewison LJ said, at paragraph 22,

In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

¹ The alternative pre-turnpike route lay via the coast, along what is now recorded as BOAT EE245.

² [2012] EWCA Civ 334

'It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.'

G.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.³

G.3. The correct test under s.53(3)(c)(ii) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description... .

G.4. The applicant believes that, taken as a whole, the evidence in this document analysis demonstrates reputation as a public road over many years, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I below), there were full vehicular rights.

H. Discovery of evidence

H.1. The application way is included as a footpath on the definitive map and statement for Kent held under Part III of the Wildlife and Countryside Act 1981. It is not clear, for the purposes of s.53(2) of the 1981 Act, what discovery of evidence took place to enable the way to be included on the definitive map and statement, but it can be stated with confidence that, the way being recorded as a footpath, little or none of the evidence disclosed in this application was considered at the time. Therefore, there is discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

I. Natural Environment and Rural Communities Act 2006

I.1. The application seeks to show that the application way is a public carriageway. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67(2) apply.

I.2. The application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980.

I.3. Generally, a way which is so recorded falls within the exception in s.67(2)(b). However, that exception does not apply to the application way because it provides for an exception only where:

³ [Consistency Guidelines](#): para.2.17.

...immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c 66) (list of highways maintainable at public expense)...

I.4. In relation to the application way, although it is shown in a s.36(6) list, it is also shown in the definitive map and statement as a footpath, and the exception cannot apply. No other exception in s.67(2) is believed to apply.

I.5. The application is therefore made for a restricted byway.

J. Points awarded

J.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*⁴.

J.2. Points:

Item	Ref	Points
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	0
Barlow-Hasted map of Kent	IV.B	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	0
Dover, Deal and Sandwich turnpike	IV.D	3
Greenwood's map of Kent	IV.E	1
Ordnance Survey, Old Series one-inch map of Kent	IV.F	0
Tithe Commutation Act 1836	IV.G	3
Kentish Coast Railway	IV.H	4
Ordnance Survey boundary records	IV.I	1
Ordnance Survey County Series 25-inch maps	IV.J	1
Highway authority records	IV.K	5
Finance (1909–1910) Act 1910	IV.L	5
Bartholomew's half inch map	IV.M	1
Definitive map and statement and highway inspectors' map	IV.N	0
Total points		24

K. Width of application way

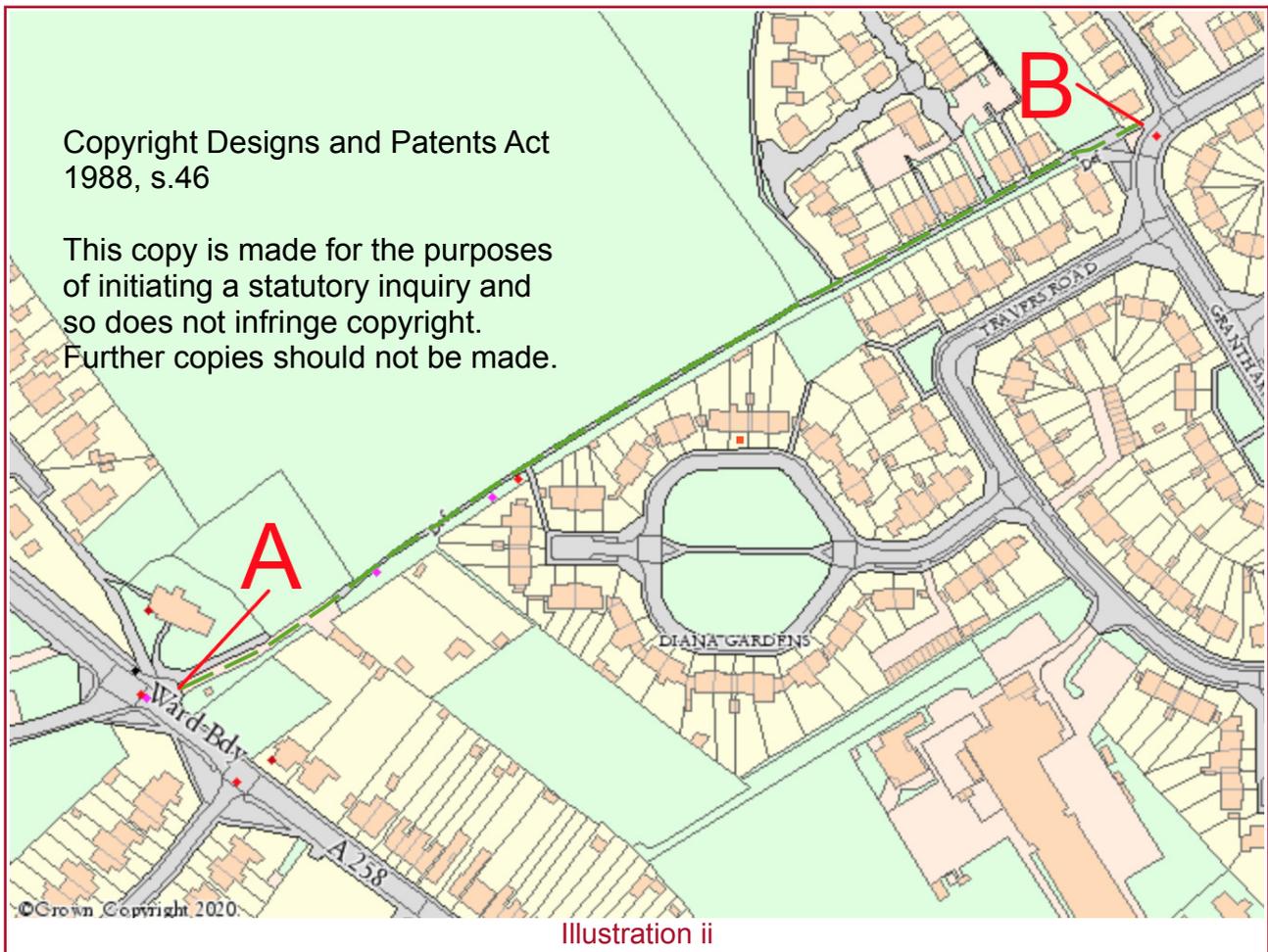
K.1. The width of the way is given variously as 9 feet (para.K.27 below) or 10 feet (para.K.55 below). The width of the way should be as scaled off the Ordnance Survey map between the physical boundaries of the application way (disregarding the surfaced path within that corridor).

4 Sarah Bucks and Phil Wadey, 2nd ed. 2017.

L. Limitations

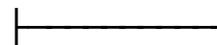
L.1. The way is believed not to be subject to any limitations, and we therefore seek that express mention is made in any definitive map modification order that there be no limitations.

II. Application map



Map centred on TR 361522

Scale: approx. 1:2,700 (when printed A4)



100m

Application way is marked — — —

Note: the parish boundary between Sholden and Deal is not shown, as visually it would interfere with the line of the application way. The parish boundary is defined as passing along the centre of the road (see item IV.I below).

III. Along the way



Illustration iii; At A, © Nick Smith



Illustration iv: Between A and B, © Nick Smith



Illustration v: Between A and B, © Nick Smith

IV. Evidence

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A. Ordnance Survey surveyor's drawing, Canterbury (East)

A.1. **Date:** 1797

A.2. **Source:** British Library website⁵

5 Sheet 107(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html



Illustration vi

A.3. **Description:** Original scale: believed to be 1:31,680 (two inches to one mile); orientation: unchanged (north).

A.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.⁶

A.5. The map shows the application way as a road from Sholden to Deal and the marshes. The map shows both the original line of the Deal to Sholden road (which

6 From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

included the western end of the application way: see para.I.E.4 above) and the line of the new turnpike road (constructed around 1797).

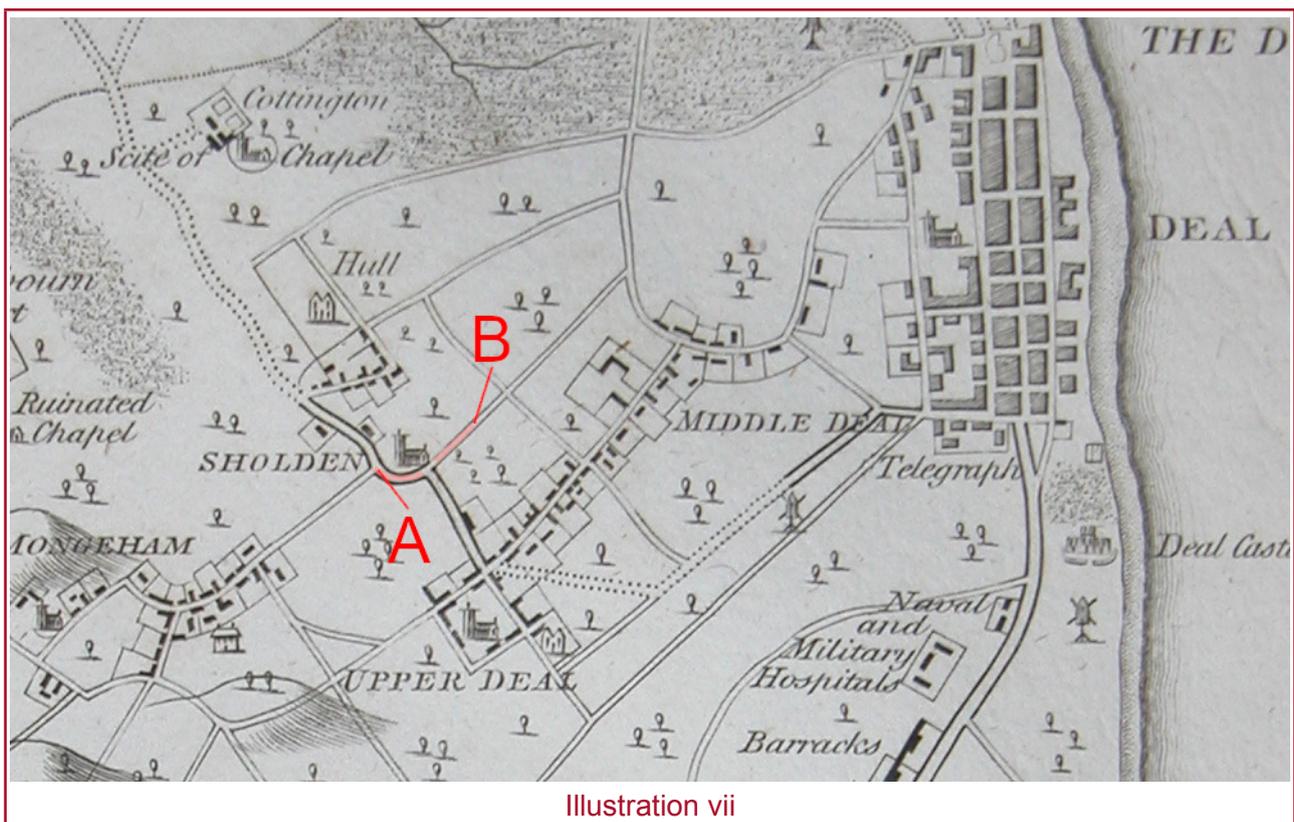
A.6. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the way at the date of survey. A map prepared primarily for military advantage was unlikely to show merely footpaths, and it therefore is reasonable to conclude that the way was considered sufficient at least for traffic on horseback.

A.7. **Points:** 0

B. Barlow-Hasted map of Kent

B.1. **Date:** 1797–1801

B.2. **Source:** Kent County Archives: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in 12 Volumes.



B.3. **Description:** Original scale: not known; orientation: unchanged (north).

B.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundred of Cornilo.

B.5. The Barlow map shows the application way as a road from Sholden to Deal and the marshes. The map shows only the original line of the Deal to Sholden road (which comprised part of the western end of Church Lane: see para.I.E.4 above) and does not include the line of the new turnpike road (constructed around 1797).

B.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route. The map was widely commercially published, and

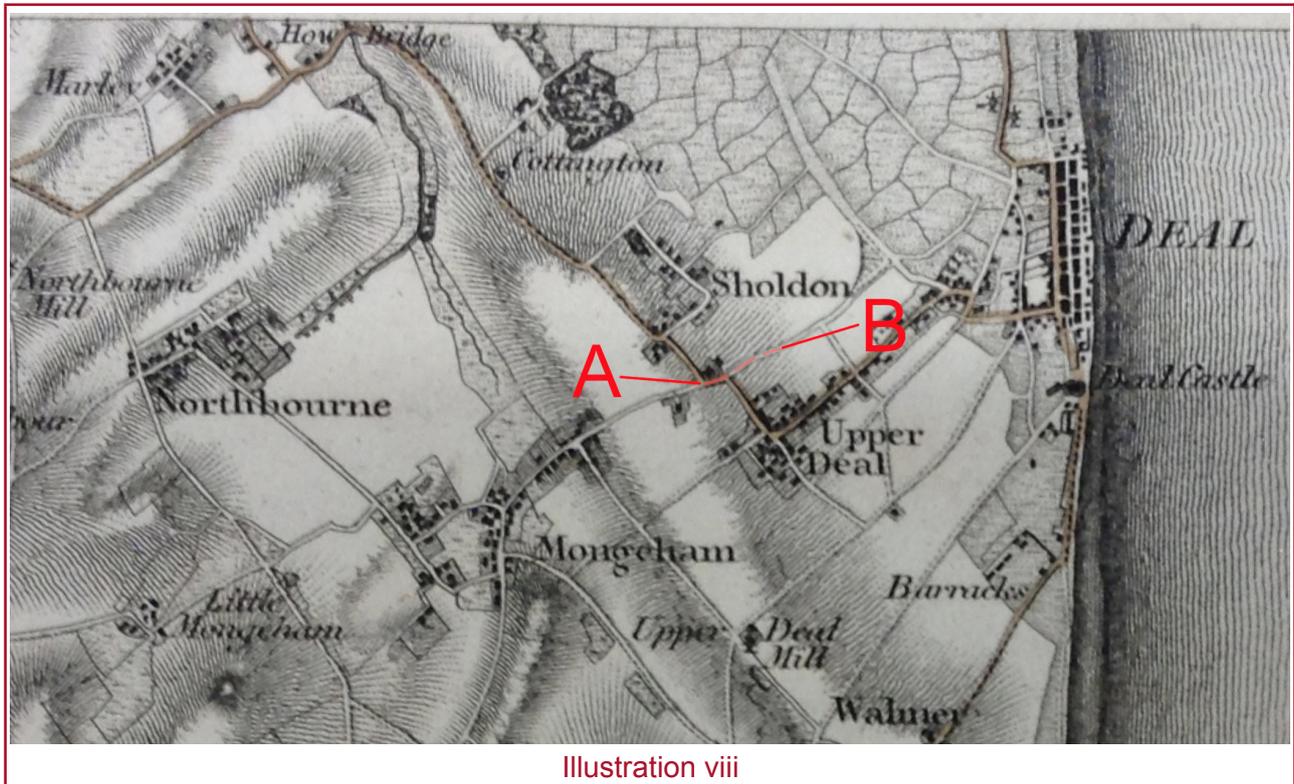
would tend to show through routes which were public highways. However, it cannot be assumed that the status is any greater than bridleway.

B.7. **Points:** 0

C. Ordnance Survey, Mudge-Faden one-inch map of Kent

C.1. **Date:** 1801

C.2. **Source:** Kent County Archives, also available at Mapco.net



C.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

C.4. This map of Kent was the first map to be to rely primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.A above). However, the Ordnance Survey did not itself publish a map of Kent until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The map shows the application way as a road from Sholdon to Deal and the marshes. The map shows only the original line of the Deal to Sholdon road (which comprised part of the western end of Church Lane: see para.I.E.4 above) and does not include the line of the new turnpike road (constructed around 1797).

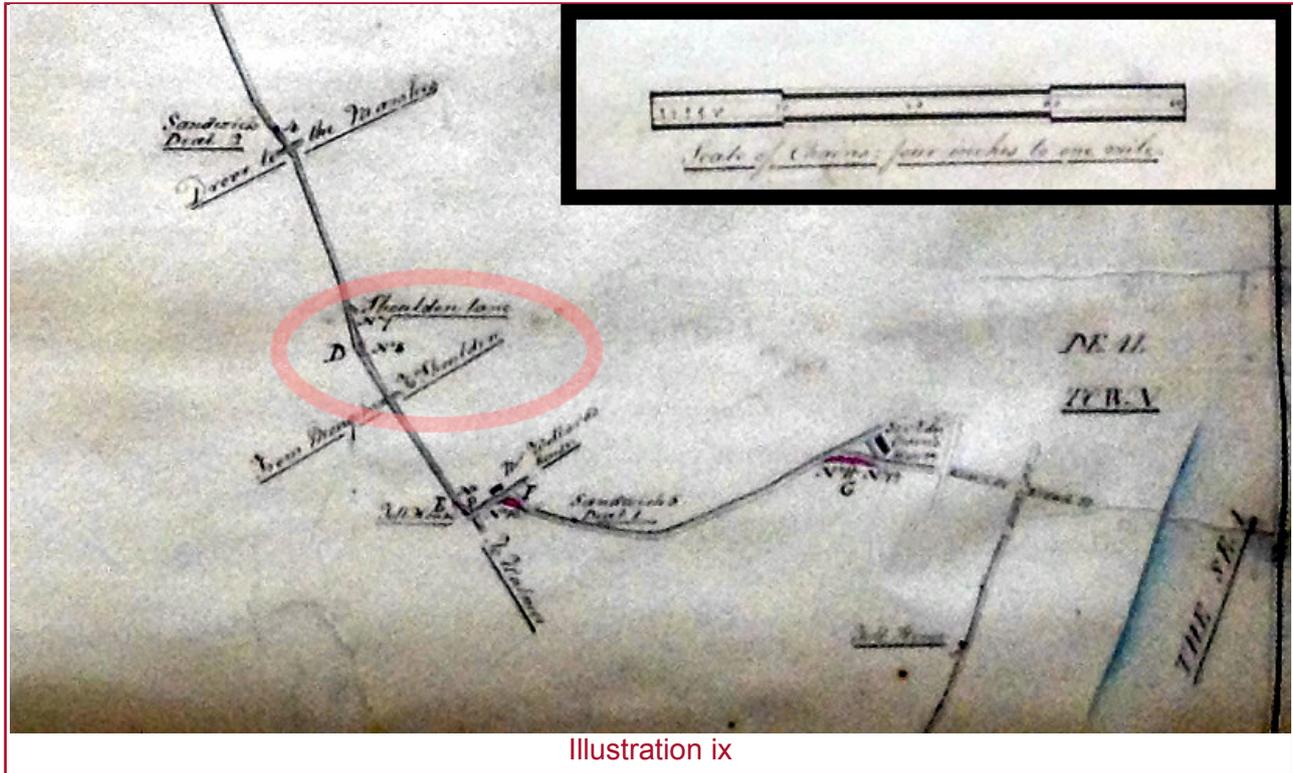
C.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. As such, the application way was likely to be of at least bridleway status.

C.7. **Points:** 0

D. Dover, Deal and Sandwich turnpike

D.1. **Date:** 1818

D.2. **Source:** Parliamentary Archives⁷



D.3. **Description:** Original scale: 1:15,840 (four inches to one mile); orientation: unchanged (north).

D.4. The Dover, Deal and Sandwich turnpike was authorised by an Act of Parliament in 1797⁸. Part of the approved route comprised the improvement of an existing road north from Sholden and the construction of a new line of route where necessary between Cottington and Worth, thus to replace the existing unsatisfactory inland route from Deal to Sandwich via How Bridge and Finglesham, which was no more than a series of country lanes, and the then alternative coastal route (now BOAT EE245).

D.5. In addition, part of the road out of Upper Deal towards Sholden was replaced by a new, straight road, now London Road, to the west of the existing roads. The old roads are now partly comprised in Vicarage Lane/footpath EE391, and a short spur of private road off London Road. Prior to these improvements, the old road joined Church Lane about 25m east of A, turned west along the southern boundary of St Nicholas' church, and then turned sharp right along what is now footpath EE391 leading to Vicarage Lane (along the western boundary of the church).

7 HL/PO/PB/3/plan22

8 37 Geo. III, c.156

D.6. In 1818, a further Act⁹ provided for improvements to the turnpike. The deposited plan for the 1818 Act shows the turnpike through A, and the application way is annotated east from A 'To Sholden'.

D.7. **Conclusion:** The plan shows only those connections from the turnpike which are likely to have been regarded as public roads, annotated with the destination of those roads. The annotation of the application way as leading to Sholden is good evidence for the status of the application way as a public road.

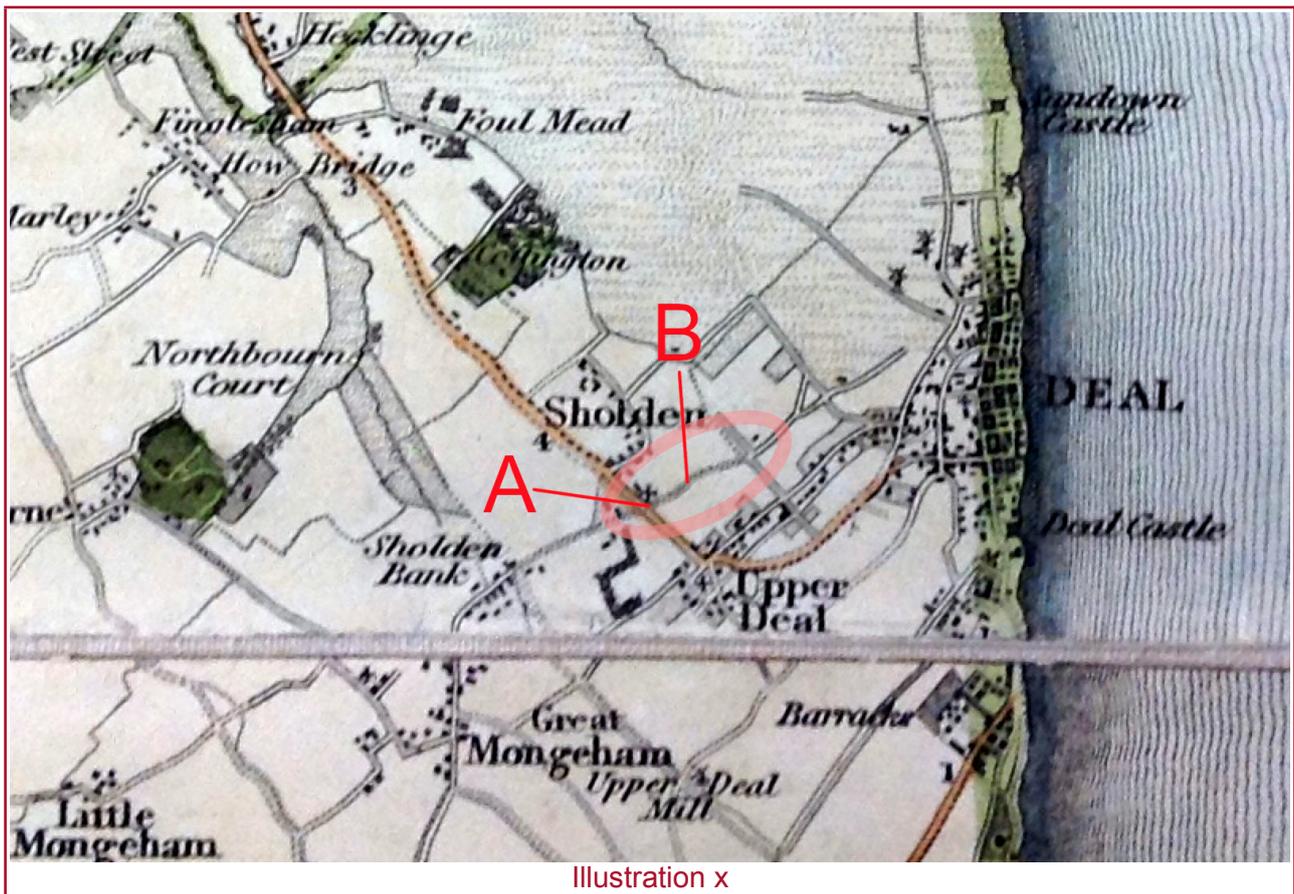
D.8. **Points:** 3

E. Greenwood's map of Kent

E.1. **Date:** 1819–20

E.2. **Source:** Kent County Archives

Greenwood map



Greenwood map key



E.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This copy appears to be state iii, published between 1821 and 1827.

E.4. The map shows the application way as a road from Sholden to Deal and the marshes. The map shows the line only of the new turnpike road (constructed around 1797: see para.I.E.4 above).

E.5. **Conclusion:** The key to the Greenwood map records the application way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (separately marked).

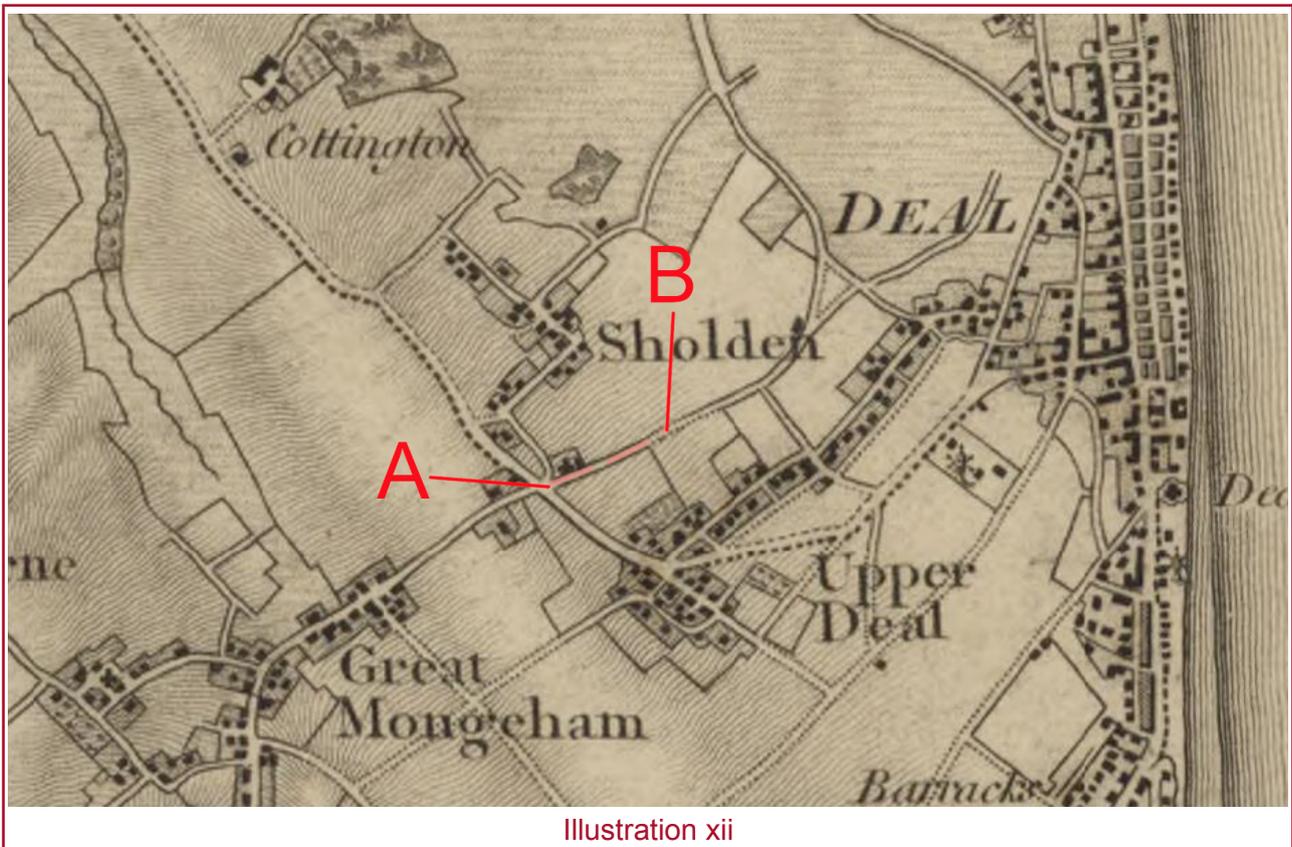
E.6. **Points:** 1

F. Ordnance Survey, Old Series one-inch map of Kent

F.1. **Date:** 1831 (but survey dating from late eighteenth century)

F.2. **Source:** National Library of Australia¹⁰

¹⁰ nla.gov.au/nla.obj-231917365



F.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

F.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

F.5. The map shows the application way as a road from Sholden to Deal and the marshes. The map shows only the line of the new turnpike road (constructed around 1797: see para.I.E.4 above), save for Vicarage Lane north from A.

F.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest.

F.7. **Points:** 0

G. Tithe Commutation Act 1836

G.1. **Date:** 1838, 1843

G.2. **Source:** Kent County Archives, National Archives¹¹

11 Via The Genealogist: www.thegenealogist.co.uk

Sholden tithe map



Illustration xiii

Deal tithe

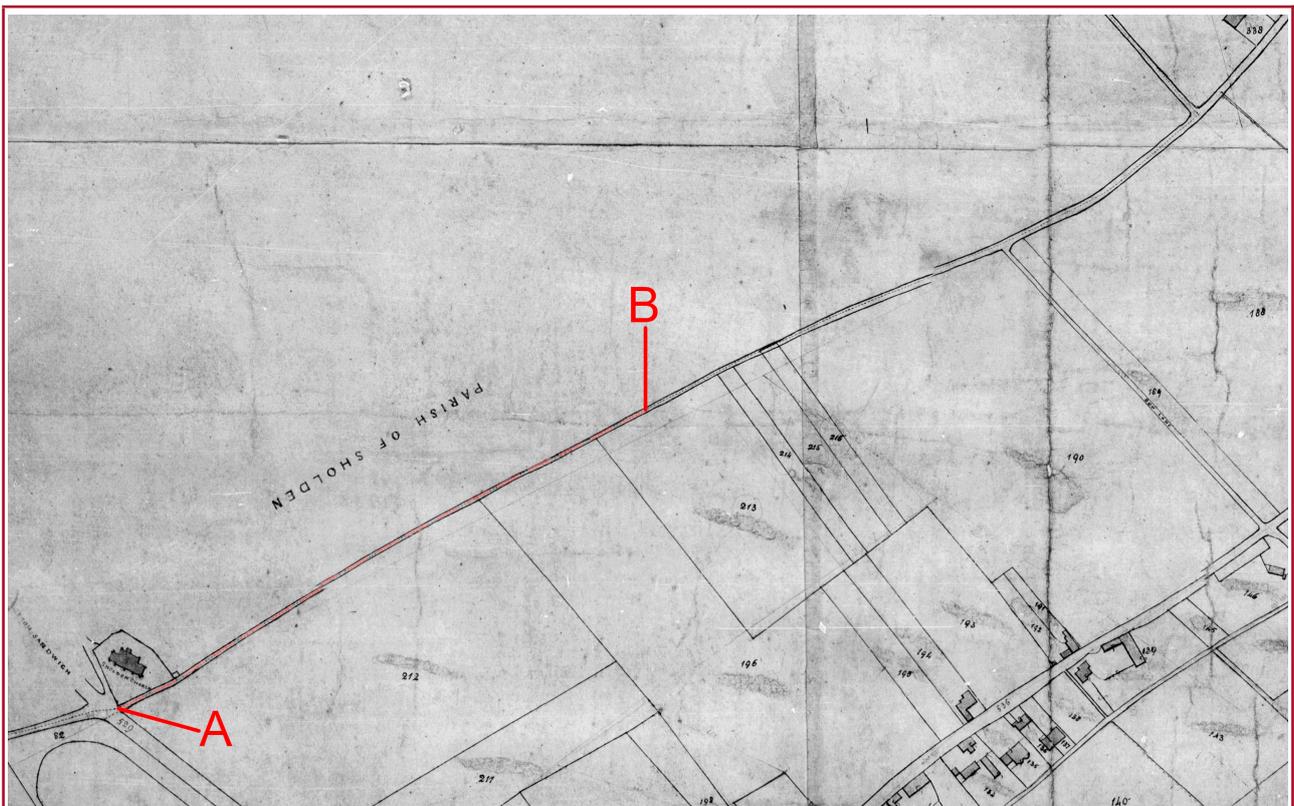
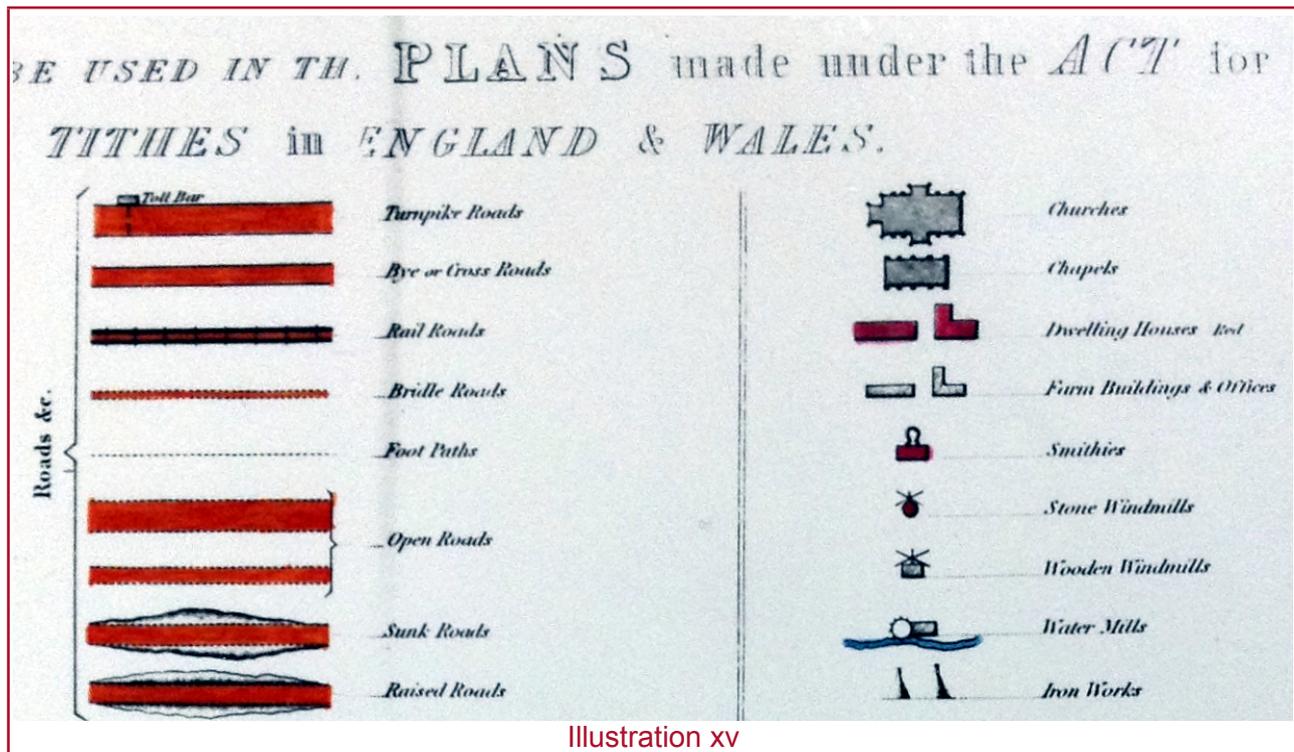


Illustration xiv

Dawson's conventional symbols



G.3. **Description:** *Sholden*: Original scale — 1:2,376 (one inch to three chains); orientation — unchanged (top is northwest). The tithe map for Sholden is not first class.

Deal: Original scale — 1:1,584 (one inch to two chains); orientation — unchanged (top is north). The tithe map for Deal is first class.

G.4. The Tithe Commutation Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

G.5. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch (this one is at three chains to the inch). There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to¹²: an extract from the convention is shown at Illustration xv above.

G.6. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award:

‘...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this

¹² *Survey of lands (Tithe Act.)*, letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act, 29 November 1836 (copy held at the National Archives).

document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.’¹³

G.7. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers’ routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

G.8. The Deal tithe map marks the application way as an enclosed road (*i.e.* with solid casing on both sides) wholly excluded from assessment, labelled as parcel 539, and with the parish boundary following the centre line of the road. The road is listed in the apportionment as 539, ‘Part of Western Road, &c’, with an area of 1a,0r,37p and given under the heading, ‘Beach and Roads, &c’. This heading includes entries for the beach and for ‘Houses, &c’¹⁴. It is suggested that those roads included under this heading entirely comprise public roads and paths within the borough of Deal.

G.9. The Sholden tithe map marks the application way as an enclosed road (*i.e.* with solid casing on both sides) wholly excluded from assessment, labelled as parcel 4, and with the parish boundary following the centre line of the road. The road is listed in the apportionment as 4, ‘Half Road from Sholden Church to Deal’, with an area of 0a,2r,18p and given under the heading, ‘Roads Walls Sewers & Beach’.

G.10. The guidance of Lt. Dawon (see footnote 3) sought that:

The boundaries and limits of all lands and parcels of land which are to be treated separately under the provisions of the Tithe Act, should be marked on the Plans, whether they be defined by fences or not. This will be more particularly requisite in cases which claim exemption from rent-charges under the Act; and where no boundary fences appear, the limits should be shown by a dotted line.

G.11. **Analysis:** A number of roads are listed in the apportionment for Sholden, as follows:

Number	Description in apportionment	Present description	Present status
1	Half Road to Deal	not visible, but probably Rectory Road	public road
2	Half Road Sholden Bank	St Richard’s Road	public road
3	Half Road to Sholden Bank	Mongeham Road	public road
4	Half Road from Sholden Church to Deal	Church Lane FP ED56	public road/public foot-path (application way)

13 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

14 It is suggested that houses so identified were on land accreted from the sea, and not subject to tithe.

Number	Description in apportionment	Present description	Present status
5	Sandwich Road	London Road	public road
6	Sholden Street	no change	public road
7	Sholden Wall	Marsh Lane BW EE385	public bridleway
8	South Wall	BP ED4	public bridleway
9	Hill Drove	FP EE387	public footpath
10	Road to Marshes	east from Cottington Farm	private
11	Sandwich Road	no change	public road
12	Road to Finglesham	no name west of turnpike and Bridge Hill	application for restricted byway ¹⁵ /public road
13	Road to Foulmead	track from turnpike to Foulmead Farm	private
14	Road to Foulmead	road past Foulmead Farm	private
15	Pinnock Wall	Pinnock Wall east of turnpike	application for restricted byway ¹⁵ /public bridleway
16	Ring Wall	no change	private
17	Marsh Road and Wall	road on marshes south of Mary Bax's stone	private
18	Old Road to Sandwich	no change/BOAT EE462	byway open to all traffic
19	Black Horse Lane	no change	private
20	Red House Wall	no change/EE460	public bridleway

G.12. Not all of these roads, identified as such in the tithe apportionment and on the tithe map (by numbering in red, with a suffix 'A'), are today recognised as public roads (or at least, as public rights of way). Several are tracks or drove roads leading into the marshes (10 Road to Marshes, 16 Ring Wall, 17 Marsh Road and Wall, 19 Black Horse Lane) which may well then have been considered to be public, but not subsequently maintained as such owing to their limited utility. Road 13 (Road to Foulmead) is less obviously a public road, but again, may have been considered to be one in the 1840s, while road 14, Road to Foulmead, appears to have been part of a way continuing to Sholden, but long since stopped up by the development of the Betteshanger colliery. Both roads 10 and 13 were classified as public way and highway, respectively, in plans for the construction of the Kentish Coast Railway (item IV.H below) dating from 1844–45, but classified as occupation roads in later railway proposals, suggesting that perceptions of status and responsibility were evolving around the time of the survey.

G.13. **Conclusion:** As regards Sholden, it is suggested that, by virtue of the exclusion of the road from assessment, and its inclusion in the apportionment in a list of 'Roads Walls Sewers & Beach', that the way was recognised as a public road.

15 PROW/DO/C389.

G.14. In relation to Deal, the inclusion of the application way in the apportionment in a list of 'Beach and Roads, &C' is likely to signify public status, but it cannot be assured that the way is a road (and not a path) — although its classification with Western Road makes it more likely than not that this was the intention,

G.15. **Points:** 3

H. Kentish Coast Railway

H.1. **Date:** 1844–45

H.2. **Source:** Kent County Archives¹⁶

¹⁶ Q/Rum/269.

Deposited plan

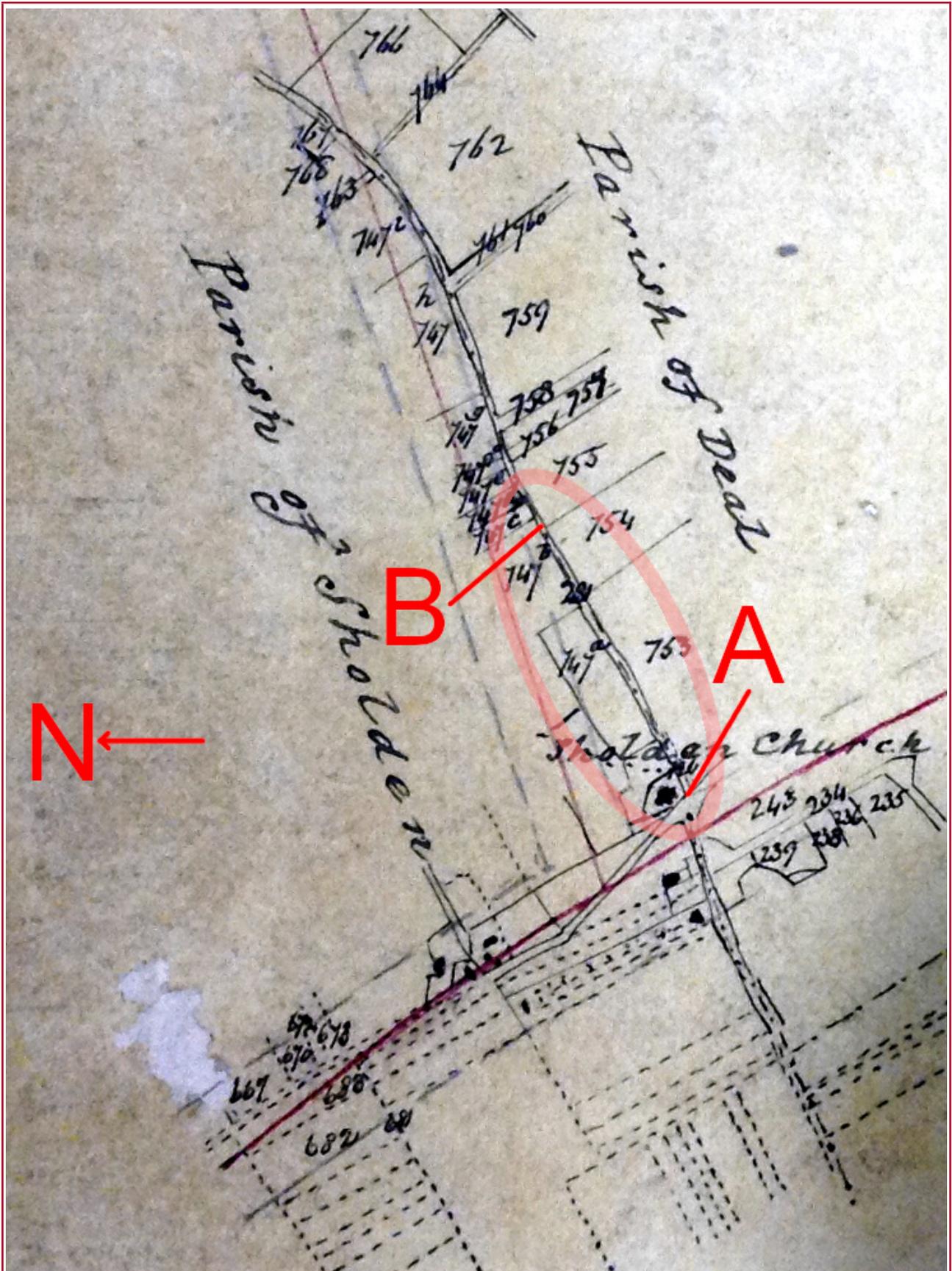


Illustration xvi

Deposited book of reference: Sholden

KENTISH COAST RAILWAY.				
THE PARISH OF <i>Sholden</i>			IN THE COUNTY OF KENT.	
NUMBER ON PLAN.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
726	Highway from Turnpike Road to Deal and parish boundary			

Illustration xvii

Deposited book of reference: Deal

KENTISH COAST RAILWAY.				
THE PARISH OF <i>Deal</i>			IN THE COUNTY OF KENT.	
NUMBER ON PLAN.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
763	Occupation Road and Boundary between Parishes of Sholden and Deal			
764	Troop path to Middle Deal			
765	Highway from Sholden Church to Middle Deal			

Illustration xviii

H.3. **Description:** Notice was given on 16 November 1844 of proposals for the Kentish Coast Railway.¹⁷ The railway was proposed to run from Dover to Herne Bay¹⁸, and what appeared to be an unadvertised branch from Sholden to Deal.

H.4. It is this branch which is shown on the deposited plan as aligned slightly to the north of Church Lane. The plots on the northern side of Church Lane, east of Sholden Church, are on the plan numbered from 747a–i and shown in the parish of Sholden, and the plots on the southern side are numbered upwards from 753. The plot number for Church Lane is partially illegible, but appears from the book of reference to be 726 — this is the plot which is given in the book of reference for Sholden as ‘Highway from Turnpike Road to Deal and parish boundary’. There is also an entry in the book of reference for Deal, under plot number 765, as ‘Highway from Sholden Church to Middle Deal’, but the plot number does not appear on the plan. However, it is clear that both entries relate to Church Lane, by virtue of the description given.

H.5. **Conclusion:** The book of reference for the Kentish Coast Railway describes Church Lane as a ‘Highway’. While this suggests some uncertainty about precise status, it is

17 Notice in the London Gazette: www.thegazette.co.uk/London/issue/20407/page/4243

18 With a branch from Ash to Ramsgate.

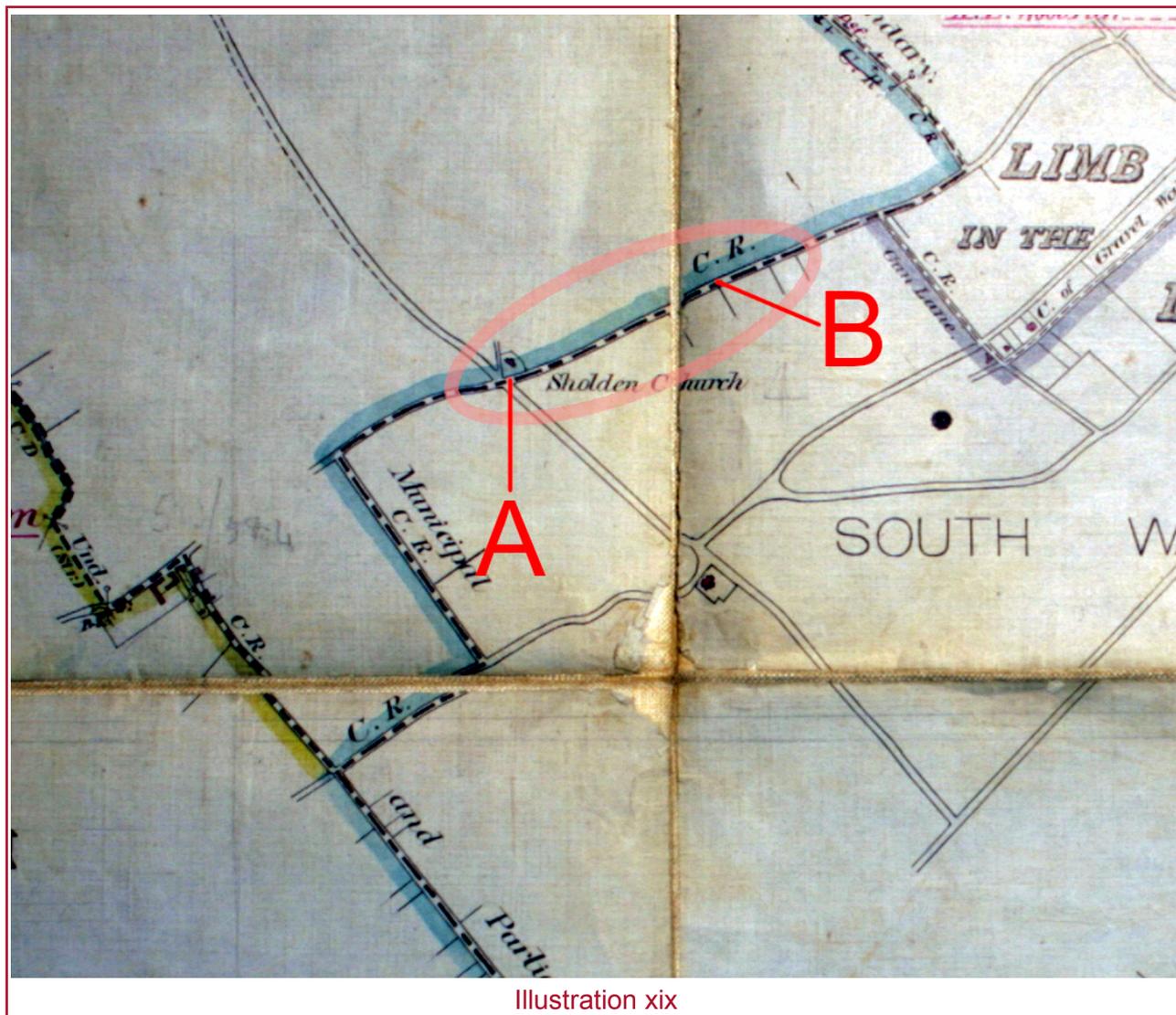
unlikely to be descriptive of a footpath, but of a public road or, possibly, bridleway, and likely to allude to uncertainty about whether driving rights subsist.

H.6. **Points:** 4

I. Ordnance Survey boundary records

I.1. **Date:** 1867–9

I.2. **Source:** National Archives¹⁹



I.3. **Description:** Original scale: 1:9,504 (12 chains to one inch); orientation: unchanged (north).

I.4. The Ordnance Survey boundary maps date from the late 1860s, and record the Ordnance Survey's surveyors efforts to capture the precise location of parish boundaries from local knowledge. These maps were drawn up following perambulation of the boundaries by the surveyor accompanied by the parish meresman (that is, a senior resident of the parish who was specially tasked with knowledge of the parish's boundaries, and who

¹⁹ OS 27/2799.

very likely would have acquired such knowledge first hand from his predecessor as meresman).

I.5. The map shows the application way forming the boundary between the parish of Sholden and the borough of Deal. The boundary is marked 'C.R.', *i.e.* the boundary is located at the centre of the road.

I.6. **Conclusion:** The map records that the municipal boundary lies along the application way, which is referred to as a 'road'. Such boundaries are usually long-established, being derived from manorial boundaries, and where they follow a road, the boundary tends to suggest that the road itself is of ancient origin.

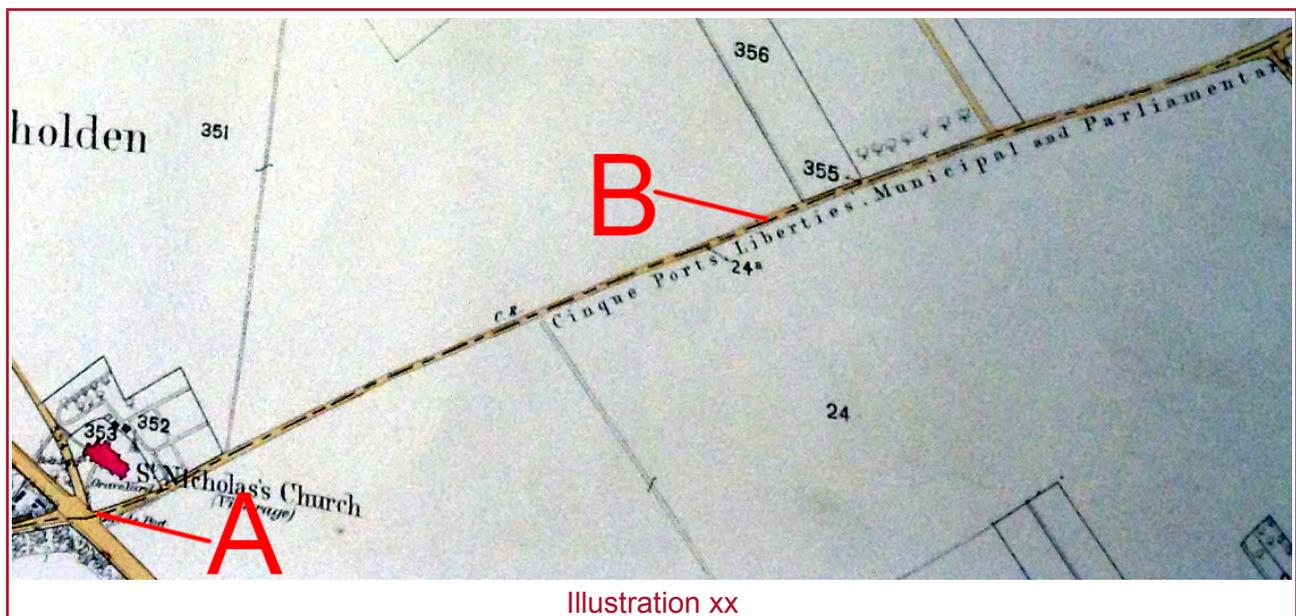
I.7. **Points:** 1

J. Ordnance Survey County Series 25-inch maps

J.1. **Date:** various

J.2. **Source:** British Library, National Library of Scotland²⁰

County Series first edition 25" map (surveyed: 1871)



20 Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheet Kent LVIII/4.

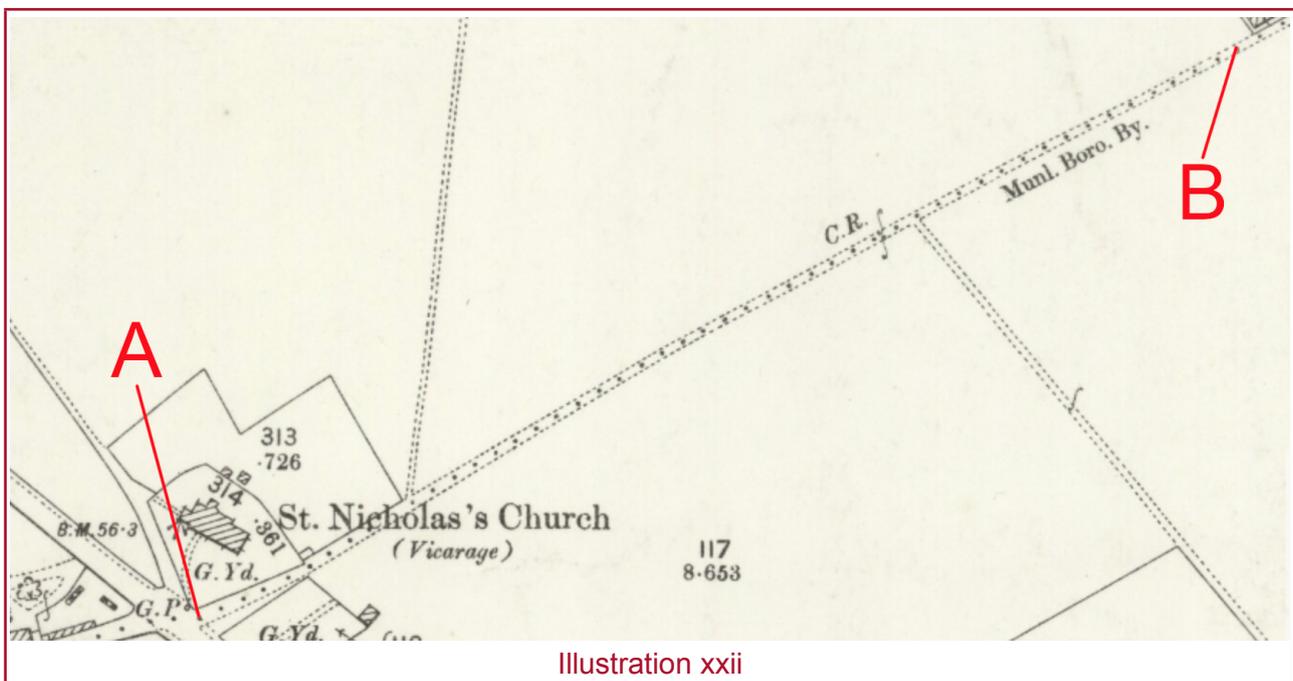
Area book

4 PARISH OF SHOLDEN.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
304	.458	Road.	352	.726	Garden.
305	28.318	Arable.	353	.361	Church and grave- yard.
306	1.831	Houses, gardens, &c.	354	.065	Road.
307	.133	Garden.	355	.391	Road.
308	.919	Road.	356	1.002	Garden.
309	7.961	Arable.	357	.379	Garden.
310	6.478	Arable.			

Illustration xxi

County Series second edition (revised: 1897)



County Series third edition (revised: 1905)

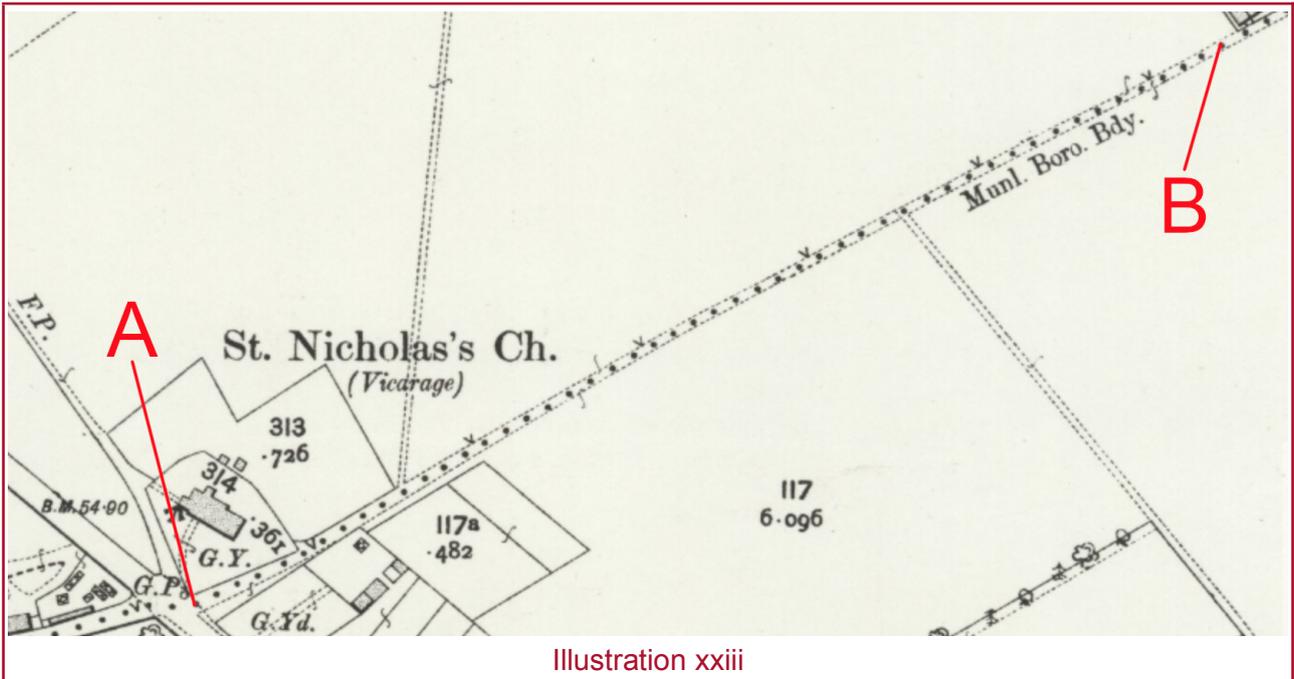


Illustration xxiii

County Series fourth edition (revised: 1938)

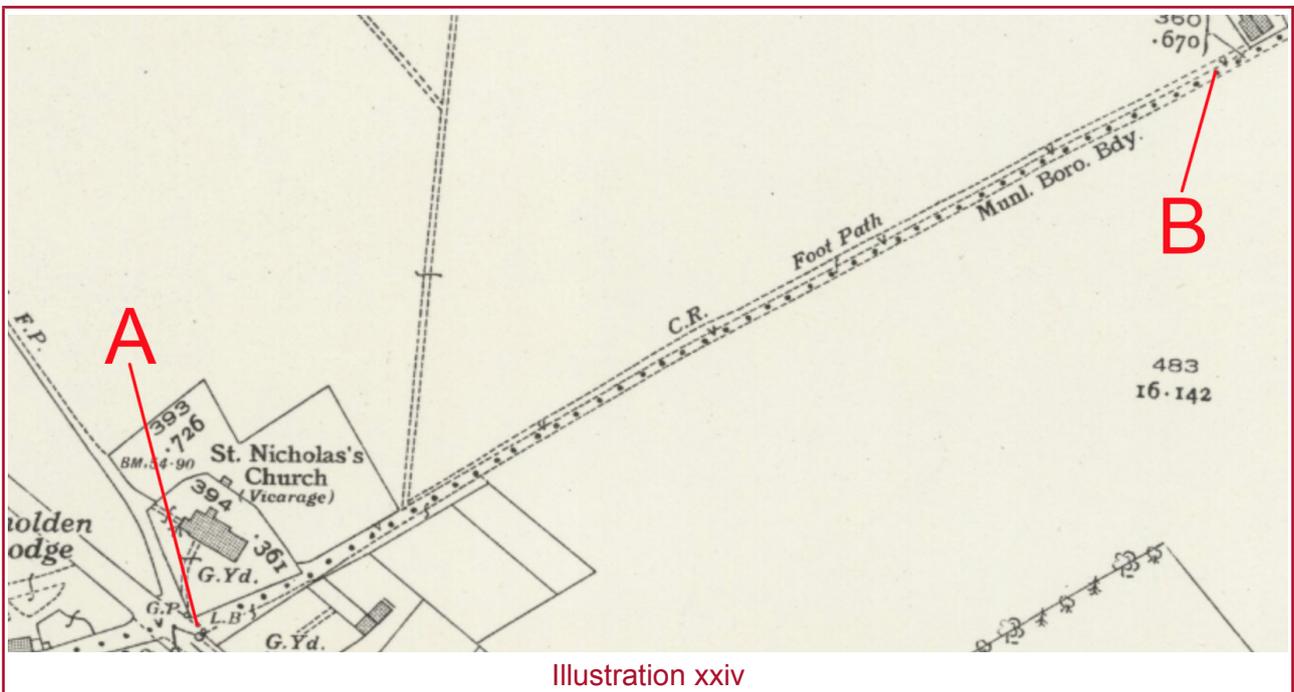


Illustration xxiv

J.3. **Description:** Original scale: 1:2,500 (twenty fives inches to one mile); orientation: unchanged (north is top).

J.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and twenty-five inches to one mile. Coverage of Kent was in four successive editions. All four editions show the application way throughout.

J.5. Colouring in sienna indicates that the road was metalled²¹. The borough and parish boundary is shown along the centre of the application way, marked 'C.R.' (see Ordnance Survey boundary records at item IV.I above). On the fourth edition map, a footpath is shown immediately outside but parallel to the application way (save through the church yard).

J.6. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application way as an enclosed road. The metalling of the way recorded on the first edition map is consistent with the way being a public road. The presence of a footpath parallel to the application way, identified on the fourth edition map, suggests that provision was made for pedestrians to walk outside the enclosed road, perhaps because the narrow road and absence of a pavement made it awkward or dangerous to pass vehicles in the road — this would have been unnecessary if the road were not available to vehicles.

J.7. **Points:** 1

K. Highway authority records

K.1. **Date:** 1899–1928

K.2. **Source:** Kent County Archives²²

K.3. **Description:** The status and repair of Church Lane was a matter of dispute over many years, and is recorded in the proceedings of the Wingham Highway Board, the Eastry Rural Sanitary Authority and the Eastry Rural District Council.

K.4. Wingham Highways Board, minuted 24 October 1867²³:

The Clerk read the District Surveyor's Report.

As to repairs of a Road leading from Sholden Church to the parish of Deal

The Clerk is directed (it being stated that the Road had never been repaired by the former Surveyor of Highways of the parish) to inform the Overseers that the Board could not interfere until the Road in question had been adopted by the parish in Vestry in manner directed by the Highway Act.

K.5. Eastry Rural District Council, minute of 4 September 1899²⁴:

Road in Sholden

Also a letter from Mr J E Turner of Cornwall Road Walmer asking if anything could be done to repair and improve the road leading from the Sandwich road at the side of Sholden church. Resolved that Messrs W Wilson, Capp & Inge be appointed a Committee to visit the spot referred to and report.

21 '*Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3rd ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

22 The file reference for each extract is given in a footnote to the extract. Where the document is not itself numbered, the page number refers to sequential numbering of the pages. The number given in brackets following the reference is the page number in the composite version of the extracts.

23 HB-W1, pp.158-159 [1–2].

24 RD/Ea/Am2, p.66 [3].

K.6. Eastry Rural District Council, minute of 18 September 1899²⁵:

Road in Sholden

The committee appointed at the last meeting recommended that this road be repaired for a length of about 440 yards there having been 16 new houses built and four more in course of erection — they also reported that the Boundary of Deal parish was in the centre of the road.

Resolved that the Surveyor prepare an estimate of the cost of the repair of the above length and that as soon as this is received, the clerk write to the Deal town council ratepayers.

K.7. Eastry Rural District Council, minute of 2 October 1899²⁶:

Road at Sholden

The surveyor produced his estimate for this road amounting to £155 and the Clerk was directed to write to the Deal Town Council and enquire if they were willing to bear their proportion of the cost.

K.8. Eastry Rural District Council, minute of 13 November 1899²⁷:

Road at Sholden

A letter from the Deal Town Council was read asking that a Committee of the Council should meet a Committee of the Deal Town Council with reference to the suggested improvement in Sholden Church Lane. Ordered that the chairman Mr Wilson Mr Inge, and Mr Capp be a Committee to meet the Committee of the Deal Town Council.

K.9. Eastry Rural District Council, minute of 5 February 1900²⁸:

Road at Sholden

The surveyor was directed to see the surveyor of Deal and arrange for such repairs of the road as may be absolutely necessary.

K.10. Eastry Rural District Council, minute of 6 August 1900²⁹:

Road at Sholden

Read a letter from Mr J E Turner urging that this road should be repaired. The Clerk was directed to reply that the Council were doubtful as to the liability of the public to repair the road and they would not undertake to spend money on its improvement.

K.11. Eastry Rural District Council, minute of 18 March 1901³⁰:

Road at Sholden

25 RD/Ea/Am2, p.68 [4].

26 RD/Ea/Am2, p.71 [5].

27 RD/Ea/Am2, p.77 [6].

28 RD/Ea/Am2, p.91 [7].

29 RD/Ea/Am2, p.120 [8].

30 RD/Ea/Am2, p.158–9 [9–10].

Read a letter from Mr Charles Wates calling attention to the condition of this lane. Resolved that the Clerk write in reply that the Council were of opinion that they were under no liability to repair it.

K.12. Eastry Rural District Council, minute of 8 December 1902³¹:

Church Lane, Sholden

Read a letter from Mr Charles Watts enclosing petition signed by the property owners and tenants having property and residing in Church Lane Sholden asking that something should be done to remedy the present very bad state of the road — deferred till next meeting.

K.13. Eastry Rural District Council, minute of 22 December 1902³²:

Church Lane Sholden

The Petition received at the last meeting was further considered and the Clerk was directed to write to the Deal Town Council again on the subject.

K.14. Eastry Rural District Council, minute of 5 January 1903³³:

Church Lane Sholden

Also letters from the Town Clerk of Deal in reply to one from the Clerk as directed at the last meeting stating that the Council would be prepared to consider any proposals made by the Council for putting the road in passable repair, the Council contributing a fair proportion towards the cost but he pointed out that as there were 34 houses on the Sholden side of the road and only one on the Deal side his Council could not be expected to incur any considerable outlay — he also pointed out that when the Committee of this Council and the Deal Town Council met some two or three years ago it was the general opinion that the road was not repairable by the public and that it was really a list way³⁴ — at the request of Mr Minter the question was further adjourned.

K.15. Eastry Rural District Council, minute of 2 February 1903³⁵:

Church Lane Sholden

Also a letter from the Town Clerk of Deal dated 23rd ultimo stating that at a meeting of the General Purposes Committee held that morning the Borough Surveyor produced a letter from Mr Henry Page calling attention to the dangerous condition of this boundary road between Court Lodge Farm and Gun Lane and stating that an accident had already occurred to a horse belonging to the tenant (Mr Taylor) — they had therefore instructed their surveyor to put that portion of the road in temporary repair and asking this Council to bear their proportion of the cost. Referred to Surveyor.

31 RD/Ea/Am3, p.60 [11].

32 RD/Ea/Am3, p.62 [12].

33 RD/Ea/Am3, p.65 [13].

34 A way between two ploughed fields, following the raised headland thrown up by cultivation.

35 RD/Ea/Am3, p.70 [14].

The question of the repair of Church Lane near Sholden Church was again deferred.

K.16. Eastry Rural District Council, surveyor's report 16 February 1903³⁶:

Church Lane Sholden

As instructed at last meeting I have inspected the length of this Lane between Gun Lane and the Eastry District Boundary a little above Court Lodge Farm. When there I saw Mr Taylor the tenant of the farm who told me that before the Deal Corporation repaired the road, the ruts were so deep it was almost impassable. The length is 31 rods [155m]. I should say with what has been done to it now that it will go until another year. I inquired of Mr Capp senior as an old inhabitant if he ever knew of anything being done to the repair of the road, and he said that he had used the land adjoining for forty years and never remembered any repair being executed by the Parish. There are 19 houses on the Sholden side between Green Lane and the Eastry District Boundary. From what I was informed regarding the state of the road before being repaired I estimated the expense at £17.3.4 for the 31 rods.

K.17. A minute of the same date³⁷:

Church Lane — Sholden

The letters from the Town Clerk of Deal with reference to this road was further considered and a letter was produced by the Surveyor from Mr S H Capp of Sholden who stated he had used the land by the side of the road for 40 years and have never known it repaired by the public — the clerk was directed to write to Mr Brown for further particulars as to the portion of the road recently repaired by the Deal Town Council.

K.18. Eastry Rural District Council, minute of 2 March 1903³⁸:

Church Lane Sholden

Read a letter from the Town Clerk of Deal in reply to one from the Clerk as directed at the last meeting explaining the circumstances under which the portion of the road referred to in his previous letter had been repaired by the Deal Town Council.

It was Resolved that whilst declining to admit the liability of the Public to repair any portion of the above road, the Council will on this occasion pay half the cost expended by the Deal Town Council under the circumstances mentioned in their letter of the 23rd ult.

It was also Resolved with reference to the road as a whole that the Council decline to repair it.

K.19. Eastry Rural District Council, minute of 6 July 1903³⁹:

Church Lane — Sholden

36 RD/Ea/H4, pp.217-218 [15–16].

37 RD/Ea/Am3, p.73 [17].

38 RD/Ea/Am3, p.76 [18].

39 RD/Ea/Am3, p.103 [19].

Also a letter from the Town Clerk of Deal enclosing account for One Moity of cost of repairing portion of Church Lane, Sholden as agreed amounting to £11-15-10 — Ordered that the amount be paid.

K.20. Eastry Rural District Council, minute of 21 December 1903⁴⁰:

Church Lane: Sholden (See Minutes 8th December last) —

A further letter was read from Mr Charles Watts with reference to the repair of this road and intimating the intention of the ratepayers to appeal to the County Council — the Clerk stated that he had written to Mr Watts as to the Owners and occupiers putting the road in order and it was decided to await a reply to this letter.

K.21. Eastry Rural District Council, surveyor's report 28 March 1904⁴¹:

Sholden Church Lane

Mr Minter drew our attention to the want of a road well at the head of this Lane to prevent its being flooded after rain from surface water off the main District Roads. The water comes from the County Council's Main road, the Deal Corporation's roads and a little from the Eastry District. I bring this suggestion before you to know if you would like to get at the Post [?] — which could be done by next meeting.

The report is annotated: 'Clerk to write to County Surveyor.'

K.22. Eastry Rural District Council, surveyor's report 3 August 1904⁴²:

Sholden, Church Lane

Mr Foster has received a reply from the County Surveyor stating that the County Council will pay £3 as their proportion towards the cost of roadwell, and from the surveyor to the Deal Corporation that they will pay £6 towards it, which letters I submit, leaving £4 for the Eastry Authority to pay. If the depth of 15 feet will answer, the expense may not amount to the above sum.

The report is annotated: 'Work to be carried out.'

K.23. Eastry Rural District Council, surveyor's report 13 September 1904⁴³:

Sholden Road Well

The road well is now completed. The arrangement was, the Deal Corporation to pay $\frac{1}{2}$, the County Council $\frac{1}{4}$, and Eastry the expense not to exceed a total of £12. The entire cost although the Well was sunk three feet deeper than at first specified was £10.10.6 which includes carting away the chalk, so that the apportionment will be

Deal Corporation	£5.5.3
County Council	£2.12.8

40 RD/Ea/Am3, p.133 [20].

41 RD/Ea/H5, p.33 [21].

42 RD/Ea/H5, p.54 [22].

43 RD/Ea/H5, p.61–62 [23–24].

Eastry Council £2.12.7
 £10.10.6

Mr Jefford's Bill has been placed before the Finance Committee today for payment amount £9.15.6 and I will send the Deal and County Council surveyors an account of what they are owing.

K.24. Eastry Rural District Council, minute of 26 September 1905⁴⁴:

Also a letter from Mr J G Elphinstone with reference to the repair of a road forming the boundary between Deal and Walmer and which had been made five years ago by the Deal Corporation — the road now required repairing and he asked this Council to bear half the cost: the Clerk was directed to reply to the letter and inquire if Mr Elphinstone was willing to throw the footpath on the Sholden side of the road into the roadway & make it up to the satisfaction of the Council if they undertook to repair it afterwards.

K.25. Eastry Rural District Council, minute of 10 October 1905⁴⁵:

Read a letter from Mr Elphinstone in reply to one from the Clerk as ordered at the last meeting stating that Mrs Elphinstone would be quite willing to throw her path into the road and make it up if the Council would then take it over with their half of the existing road in the same way that the Deal Authority took over their half and stating he should be much obliged if the Surveyor could let him have an estimate for the necessary work — the Surveyor was instructed to prepare estimate.

K.26. Eastry Rural District Council, minute of 7 November 1905⁴⁶:

Read a letter from Mr J G Elphinstone with reference to the road at Upper Deal forming the boundary between Deal and Sholden stating that Mrs Elphinstone was willing to pay the cost of making the part of the road and footpath in Sholden Parish as estimated by the Surveyor if the Council would then take the road over.

The Clerk was directed to reply that on the work estimated for by the Surveyor being carried out they would undertake the future repair of the road and that in accordance with the letter received they had instructed the Surveyor to carry out the work.

K.27. Eastry Rural District Council, minute of 30 January 1906⁴⁷:

Church Lane Sholden

Read a letter from the Clerk of the County Council stating that they had received a complaint with reference to the non-repair by the Council of a road known as Church Lane Sholden and asking whether the road was correctly described as being in the Eastry Rural District and if so upon what ground the Council declined to repair it if that allegation was correct.

44 RD/Ea/Am4, p.24–25 [25–26].

45 RD/Ea/Am4, p.27 [27].

46 RD/Ea/Am4, p.32–33 [28–29].

47 RD/Ea/Am4, p.45 [30].

The Clerk was directed to reply that so far as this Council is informed the lane in question is an occupation road about 9 feet wide, which forms the boundary between Deal and Sholden and has never been repaired by the Public. One half of the Lane is in this district.

K.28. Eastry Rural District Council, minute of 13 February 1906⁴⁸:

Church Lane Sholden

Also a letter from Mr H Page stating that his tenant at Court Lodge (Mr Taylor) complained almost continually of this road and asking that the matter might be attended to. The Clerk was directed to reply that the road in question did not appear to be one repairable by the Council.

K.29. Eastry Rural District Council, minute of 27 February 1906⁴⁹:

Church Lane Sholden

Read a letter from the Town Clerk of Deal stating that the Town Council had received a letter from Mr Charles Watts complaining of the condition of the road between Gun Lane and South Wall Road and asking the Council to take some steps to put it in order and mentioning that he had written to this Council who had replied to the effect that it did not appear to be a road repairable by them he also stated that three or four years ago the road was put in order by their Surveyor at the joint expense of this Council and the Borough of Deal and that there could be no doubt this Council were jointly liable with Deal. The Clerk stated that he had referred to the Correspondence which had taken place on this subject between the Town Clerk of Deal and himself in February and March 1903 from which it appeared that the repairs above referred to were ordered by the Town Council of Deal previous to communicating with this Council and that on the 2nd March 1903 he wrote to the Town Clerk of Deal in accordance with a resolution passed by this Council as follows:—

“That this Council whilst declining to admit any liability for the repair of this road, will, under the circumstances mentioned in your letter of the 23rd ultimo pay your Council one half of the cost incurred.”

Resolved that the clerk write in reply that this Council has always contended that the road in question is not repairable by the Public.

K.30. Eastry Rural District Council, minute of 13 March 1906⁵⁰:

Church Lane Sholden

Read a further letter from the Town Clerk of Deal re-iterating his opinion as to the liability of the Borough and Rural Councils to put this road in passable repair — the Clerk was directed to acknowledge the receipt of the letter and state that the Council adhere to their decision.

48 RD/Ea/Am4, p.47 [31].

49 RD/Ea/Am4, p.50–51 [32–33].

50 RD/Ea/Am4, p.54 [34].

K.31. Eastry Rural District Council, minute of 27 March 1906⁵¹:

Church Lane Sholden

Also a letter from Mr Charles Watts with reference to this Road stating that they could not continue to pay the "District part of the rate" until the Council could see their way to alter their decision, the Clerk was directed to acknowledge the receipt of the letter and point out that the Owners of property had not done any thing to make up the road.

K.32. Eastry Rural District Council, surveyor's report 10 April 1906⁵²:

Sholden

Drainage at Church Lane

I have inspected this with Mr L Randerson the Main Rd Inspector. The present Road Well is 18ft deep; 4 feet over at top and 7ft at bottom, this could be deepened by 10 or 12 feet, or dig a new road well which the Main Rd Inspector recommends providing the Deal Corporation are willing to pay their part of the cost. I have written Mr Golder the Deal Borough Surveyor twice, but have had no reply. If the present well was deepened 12 feet the cost would be altogether with carting away chalk about £5.10.0. A new well I estimate the cost about £12.0.0. The Main Rd Inspector asks for copies of the estimate if the work is carried out, so that he can let Mr Maybury the County Surveyor place them before his Committee.

The report is annotated: 'Deferred'.

K.33. Eastry Rural District Council, surveyor's report 24 April 1906⁵³:

Sholden

Drainage at Church Lane

I met Mr J C Golden the Deal Borough Surveyor on Saturday regarding the above, who doubts whether his Council will do anything more in the matter, and he thought it would be best to send a copy of the letter complaining of the nuisance to his Council.

K.34. A minute of the same date⁵⁴:

Church Lane — Sholden

Also a further letter from Mr Charles Watts urging the Council to further consider the question of the repair of this road and stating that the property Owners could not see their way to make any proposal in the matter they considered that each time they paid their rate they were contributing towards the cost of repairing that road and that they had been heavy losers through empty houses caused by the state of it.

51 RD/Ea/Am4, p.57 [35].

52 RD/Ea/H5, p.144b, 145 [36–37].

53 RD/Ea/H5, p.148b [38].

54 RD/Ea/Am4, p.66 [39].

Also a letter from the Sholden Parish Council stating they would be glad if this Council could see their way to make up the road it being almost impassable particularly for children attending Sholden or Deal Schools.

It was Resolved that the Surveyor meet the Surveyor of the Deal Borough and prepare an estimate of the cost of repairing the part of the road as far as the houses and that the matter then be further considered.

K.35. Eastry Rural District Council, surveyor's report 8 May 1906⁵⁵:

Sholden

Church Lane

I have measured up the length of road in front of the houses; the length is 63 rods [317m] long, the width varies from eleven to 14ft, the cost of putting this in repair with carting away surplus soil and providing brick bats chalk & flints with steam rolling, team labour, manual labour; will be about £122.15.0, half of this amount the Deal Corporation would be liable for.

K.36. A minute of the same date⁵⁶:

Church Lane Sholden —

The Surveyor reported that he had made an estimate of the cost of putting this road in order amounting to £137 .15.0 one half of which would be payable by Deal and it was Resolved that the Clerk write to Mr J E Turner one of the adjoining Owners stating that if the Owners would undertake to contribute £30 towards the cost the Council would endeavour to arrange with Deal for the work to be carried out.

K.37. Eastry Rural District Council, minute of 22 May 1906⁵⁷:

Church Lane — Sholden —

Also a letter date 9th May from Mr J E Turner in reply to one from the Clerk as directed at the last meeting stating that he had submitted the Council's proposals to the respective Owners for their consideration and as soon as he heard their views he would write again.

Also a letter dated 11th May from Dr Hardman stating that Mr Turner had handed him the Clerk's letter and that he had been instructed to state that neither Mr Turner nor any other Owner was willing to contribute towards the repair of this road — that a week or two ago he lodged with the Kent County Council a complaint under section 10 of the Highways Act 1878⁵⁸ that the Highway Authorities had made default in maintaining the road — the consideration of the matter was deferred.

55 RD/Ea/H5, p.149 [40].

56 RD/Ea/Am4, p.68 [41].

57 RD/Ea/Am4, p.71 [42].

58 i.e. the Highways and Locomotives (Amendment) Act 1878. S.10 provided for complaint to the county council that a highway authority for an area was in default in maintaining or repairing a highway within its jurisdiction.

K.38. Eastry Rural District Council, minute of 5 June 1906⁵⁹:

Church Lane — Sholden

The letter from Dr Hardman read at the last meeting was further considered together with a letter from the Clerk of the County Council stating that the complaint was before the County Council on the 16th ultimo and was referred to the Roads Committee and asking to be informed how the matter stood — the Clerk was directed to inform the Clerk of the County Council of the facts and write to Dr Hardman enquiring if he could supply the Council with any evidence showing the lane in question to be a Public Highway.

K.39. Eastry Rural District Council, minute of 19 June 1906⁶⁰:

Church Lane — Sholden —

The Clerk read a letter he had received from Dr Hardman upon the above subject and reported the steps taken by him since the last meeting to obtain information — it was resolved that the Clerk be authorised to confirm with Mr Arthur Lees, Solicitor upon the subject with a view to obtaining information with reference to the making of the Deal Main Road and of the road which was formerly used and for which the new road was in substitution and to pay his charges therefor.

K.40. Eastry Rural District Council, minute of 3 July 1906⁶¹:

Church Lane — Sholden —

The Clerk also reported that he had made careful enquiry into this matter and had [?] copy of the Act of 37 Geo. 3rd. cap. 156 and had also received from Mr Hardman statements of witnesses he proposed to call in support of his clients memorial to the County Council — that so far as he had been able to ascertain the [?] road was not part of the old road for which the new Turnpike road was substituted and that it appeared to have been a road used by the public as at present on the passing of the General Highway Act 1835 And that there appeared no ground for contending that the Council were not liable to repair it. Resolved that the Clerk communicate with the Deal Town Council and suggest a meeting of the Surveyors of the two Councils with a view to the necessary repairs being carried out and that he inform the Clerk of the County Council of this council's decision.

K.41. Eastry Rural District Council, surveyor's report 31 July 1906⁶²:

Sholden

Church Lane

I met Mr J C Golden the Deal Borough Surveyor there yesterday, and is going to report to his Council tonight. He recommends Clinkers in the place of Chalk and Brick bats. He thinks we can purchase them very reasonable at the Gas Works Deal.

59 RD/Ea/Am4, p.73 [43].

60 RD/Ea/Am4, p.76 [44].

61 RD/Ea/Am4, p.80 [45].

62 RD/Ea/H5, p.158 [46].

K.42. Eastry Rural District Council, minute of 6 November 1906⁶³:

Church Lane Sholden —

Read letters from the Town Clerk of Deal from which it appeared that the Council proposed to carry out the repairs to this road in accordance with the estimate of Mr Foster at a cost of £137.10.0. It was Resolved that the Council pay one half of this sum if the Surveyor's specification is fully carried out.

K.43. Eastry Rural District Council, surveyor's report 20 November 1906⁶⁴:

Sholden

Church Lane

I wrote to Mr J C Golden the Deal Borough Surveyor in reference to the differences in the cost of materials being deducted. He replies saying we shall have the advantage if there is any. His letter I submit. The work as been put in hand.

K.44. Eastry Rural District Council, surveyor's report 4 December 1906⁶⁵:

Sholden Church Lane

Mr J C Golden the Deal Borough Surveyor is getting on with the clearing and levelling, and has commenced getting the Clinkers on for the foundation when he has got these rolled down he will commence spreading the flints.

K.45. A minute of the same date⁶⁶:

Church Lane Sholden —

Read a letter from Mr Watts of Church Lane Sholden stating he was informed that no provision had been made for kerbing and making up the footpath on the Sholden side of this road and that the road was being made higher than the footpath. Surveyor to report.

K.46. Eastry Rural District Council, surveyor's report 18 December 1906⁶⁷:

Sholden Church Lane

I called on Mr C Watts in reference to his letter about the footpath. Mr Golden found when taking his levels he would have to bring the road up in front of Mr Watts to get the water away. I met Mr Golden there, and ask him when excavating for the road to allow his men to spread some of the best of the surplus soil on the footpath to bring it up which he has allowed them to do. And if some footpath gravel was spread over the soil it would put the path in very good condition. When preparing my estimate for the road I allowed for 20 yds of footpath gravel. Mr Golden did not as the path was on the Sholden side.

63 RD/Ea/Am4, p.105 [47].

64 RD/Ea/H5, p.180 [48].

65 RD/Ea/H5, p.181 [49].

66 RD/Ea/Am4, p.113 [50].

67 RD/Ea/H5, p.184 [51].

K.47. Eastry Rural District Council, minute of 13 August 1907⁶⁸:

Church Lane Sholden — See minutes 6th November 1906 —

Received from Deal Corporation account for making a portion of Church Lane Sholden, in pursuance of the arrangement between the two Councils, amounting to £115.12.2 — the Clerk stated that the estimate of the Surveyor (Mr Foster) was £137.10.0.

K.48. Eastry Rural District Council, surveyor's report 27 August 1907⁶⁹:

Church Lane Sholden

As instructed at the last meeting I have inspected the above; and found it in good condition. There is a deep ditch on the right hand side going down, from Gun Lane to the end of the boundary. This is on the Deal side of the road and will be on the length which the Deal Borough Surveyor is going to take over.

K.49. Eastry Rural District Council, surveyor's report 6 October 1908⁷⁰:

Sholden

I met by appointment Mr J C Golden Deal Borough Surveyor on Friday last in Church Lane Sholden. To measure up the length of road which was repaired in 1907. As the boundary of the two districts goes down the centre of road Mr Golden suggests that he takes the length north of Gun Lane, he will bring this before his Committee on Friday and write me again. The same thing would meet the case at Glack Rd⁷¹ were the boundary is in the centre of rd. Mr Golden suggests that he should take the half of this length nearest Pound Lane.

The report is annotated: 'Recommended that the suggestion be accepted.'

K.50. Eastry Rural District Council, surveyor's report 3 November 1908⁷²:

Sholden Church Lane + Glack Rd

I have received a letter from Mr J C Golden, Deal Borough Surveyor, stating that his Committee were agreeable for him to take the portion of Church Lane north of Gun Lane to keep in repair, also half the length of Glack Rd 354 linear feet. Footpaths and the construction of same to be done by the Council in whose district the same are in & not to form part of this agreement. His letter I submit.

The report is annotated with a tick.

K.51. Eastry Rural District Council, minute of 16 May 1911⁷³:

Sholden

68 RD/Ea/Am4, p.172 [52].

69 RD/Ea/H5, p.215 [53].

70 RD/Ea/H6, p.4 [54].

71 A road in Upper Deal formerly extending between Rectory Road and Mongeham Road (now partially stopped up).

72 RD/Ea/H6, p.9 [55].

73 RD/Ea/Am6, p.21 [56].

Also a letter from the Parish Council calling attention to the disgraceful condition of the upper part of Church Lane near the Church caused by the depositing of sundry kinds of refuse in the roadway. Surveyor instructed to look into the matter.

K.52. Eastry Rural District Council, surveyor's report 30 May 1911⁷⁴:

Sholden Church Lane

I have made enquiries in reference to the letter complaining about the tins & rubbish being deposited in Church Lane Sholden.

There are a lot of old tins which want carting away. I should suggest that a caution board similar to that at Hounds Pits Hill Woodnesboro be erected. This might prevent any further nuisance.

The report is annotated with a tick.

K.53. Eastry Rural District Council, minute of 5 September 1911⁷⁵:

Church Lane Sholden

Also a letter from the Town Clerk of Deal stating that his Council had received a complaint with reference to the state of this road at the upper end at its junction with London Road near Sholdon Church and asking if any arrangement could be made between the two authorities for putting the road in order at this point. The surveyor was instructed to confer with Surveyor of the Deal District and report to the Council.

K.54. Eastry Rural District Council, surveyor's report 19 September 1911⁷⁶:

Church Lane Sholden

In reference to instructions received at the last meeting to meet the Deal Borough Surveyor at the above mentioned lane. Mr Golden is away on Holiday until the 25th next Monday.

The report is annotated with a tick.

K.55. Eastry Rural District Council, surveyor's report 17 October 1911⁷⁷:

Church Lane Sholden

I met Mr J C Golden the Deal Borough Surveyor yesterday. In reference to the application for repairing the top end of Church Lane near Sholden Church. The length down to the point which the Deal Town Clerk wrote about, is 180 feet long by 10ft wide.

To repair this with flints the cost with material steam rolling & labour would be about £10. If the work is carried out as the boundary of the district goes down the centre of the road: the expense to this Council would be £5.

The report is annotated: 'Council prepared to bear part of cost.'

74 RD/Ea/H6, p.167 [57].

75 RD/Ea/Am6, p.42 [58].

76 RD/Ea/H6, p.179 [59].

77 RD/Ea/H6, p.181 [60].

K.56. Eastry Rural District Council, surveyor's report 4 February 1913⁷⁸:

Church Lane Sholden

As instructed at the last meeting I have inspected & measured up (Church Lane) the length from Deal & Sandwich Main Road down to where the road was made up in 1907 the length is 450 yards long by 7ft wide. It would be useless to make a footpath in the existing roadway. As the occupiers of the land on either side use the road carting to and from the fields.

If a footpath was made on the field by side of the roadway where there use to be a path, the cost with gravel & labour would be £20.0.0.

If the road was made up at its greatest width 7ft with chalk & flints the cost with materials labour etc would be about £80.

The report is annotated: 'No 1 Highway Committee to inspect & report.'

K.57. A minute of the same date⁷⁹:

Church Lane Sholden

Also a letter from Harry Long of St Claire, near Rye, Isle of Wight calling attention to the state of this road and asking that it might be improved. Referred to No.1 Highway Committee for report.

K.58. Eastry Rural District Council, surveyor's report 18 February 1913⁸⁰:

Church Lane Sholden

As requested at the last meeting the No.1 Highway Committee inspected the above mentioned road last Wednesday. The committee recommended that the road be made up from Sandwich & Deal Main Rd down to where it is already. 7 ft wide with chalk & flint at a cost of £140, and that the Deal Corporation be approached to contribute part of the cost. They also suggest that the land owners on either side be asked to give sufficient land for a passing place half way down.

The report is annotated: 'Clerk to write Deal Corporation also to land owners.'

K.59. A minute of the same date⁸¹:

Church Lane Sholden

Also a further letter from Mr H Long in reply to one from the Clerk with reference to this road. The Highway (No.1) Committee reported that they had, in company with the Surveyor, inspected this road and recommended that it be made up seven feet wide from Sholden Church to where it is at present repaired a distance of 450 yards with chalk and flints at an estimated cost of £140 and that the Deal Town Council be asked to contribute one half the cost — they also suggested the landowners on either side be asked to give sufficient land for a passing place half way down. Resolved unanimously that the

78 RD/Ea/H6, p.242 [61].

79 RD/Ea/Am6, p.165 [62].

80 RD/Ea/H6, p.243–4 [63–64].

81 RD/Ea/Am6, p.169 [65].

report be adopted and that the Clerk write to the Deal Town Council accordingly.

K.60. Eastry Rural District Council, minute of 4 March 1913⁸²:

Church Lane Sholden

Read a letter from the Town Clerk of Deal in reply to one from the clerk as directed at the last meeting stating that it had been considered by the general Purposes committee who did not feel inclined to spend £70 on work which would leave that part of the road wide enough for single vehicles only and he thought they took the view that the upper part of this road was not sufficiently important to Deal to warrant such an expense in any case, having regard to the more urgent demands arising in respect of other roads within the Borough — at the same time they thought it might be as well to go into the matter and they suggested that this Council's Surveyor should meet the Borough Surveyor who could then be made fully acquainted with what was proposed to be done. The Surveyor was directed to arrange to meet the Borough Surveyor as suggested.

K.61. Eastry Rural District Council, surveyor's report 18 March 1913⁸³:

Church Lane Sholden

I met the Deal Boro Surveyor on Wednesday last in reference to the making up of the top part of Church Lane Sholden. Mr Gordon the Surveyor is reporting to his Committee. I pointed out to Mr Golden the lane could be greatly improved by the construction of an overflow soakaway, or a considerable enlargement of the present one, as this was quite inadequate since the main road had been tarpainted.

The report is annotated with a tick.

K.62. A minute of the same date⁸⁴:

Church Lane Sholden

The Surveyor reported that he had met the Deal Borough Surveyor who would report to his Committee.

K.63. Eastry Rural District Council, minute of 1 April 1913⁸⁵:

Church Lane Sholden

Also a letter from the Town Clerk of Deal stating that his Committee had considered the report of their Surveyor after his interview with the Surveyor of this Council — that they did not see their way to spend £70 under the circumstances and on their reporting to the Council to that effect the latter body had adopted the Committee's report and he was directed to state that the Council could not bear any part of the proposed expenditure. The Clerk was directed to inform Mr Long of the decision of the Deal Town Council.

82 RD/Ea/Am6, p.176 [66].

83 RD/Ea/H6, p.249 [67].

84 RD/Ea/Am6, p.179 [68].

85 RD/Ea/Am6, p.182 [69].

K.64. Eastry Rural District Council, surveyor's report 13 May 1913⁸⁶:

Sholden Church Lane

In reference to the complaint of a pipe being laid in above mentioned road, and left dangerous. I find by enquiries that a Miss Grange of Liverpool Road Walmer had the pipes laid to improve the entrance to her stables. I met her Coachman there last week, and told him I did not think the Council would object to them, if Miss Grange would have them removed back close to bank and level road off at lower end.

The report is annotated: 'Surveyor to see that the pipes are set back, also to erect a notice board, caution not to deposit rubbish in this lane.'

K.65. Eastry Rural District Council, minute of 20 March 1919⁸⁷:

Church Lane Sholden

Also a letter from the County Surveyor to whom the vicar of Sholden had written with reference to the condition of this lane leading to the Church and schools. The consideration of the letter was deferred.

K.66. Eastry Rural District Council, minute of 22 April 1919⁸⁸:

Church Lane Sholden

Mr Burgess reported that this matter was still under consideration but that no definite report would be given at this meeting.

K.67. Eastry Rural District Council, minute of 15 July 1919⁸⁹:

Church Lane Sholden

The Clerk reported that he had been in communication with Mr I J Capp with reference to his allowing a footpath on his land by the side of Church Lane, the Council being willing to pay an acknowledgement, and a letter in reply was read stating that the Trustees of the land could not give permission and that the property would shortly be coming into the market. Clerk to communicate again with Mr Capp.

K.68. Eastry Rural District Council, minute of 21 February 1922⁹⁰:

Sholden

Read a letter from the Clerk to the Sholden Parish Council enclosing a Petition received by such Council with reference to the widening of the upper portion of Church Lane so that the roadway could be used for traffic. Referred to No.1 Highway Committee.

86 RD/Ea/H6, p.258 [70].

87 RD/Ea/Am8, p.153 [71].

88 RD/Ea/Am8, p.159 [72].

89 RD/Ea/Am8, p.173-4 [73-74].

90 RD/Ea/Am9, p.149 [75].

K.69. Eastry Rural District Council, minute of 21 March 1922⁹¹:

Sholden

The No.1 Highway Committee reported that they had with Representatives from the Corporation of Deal and the County Surveyor inspected Church Lane Sholden and that the Deal Representatives had promised to consult the Deal Town Council on the matter. The Committee were of opinion that the owners of the land on the side of the road in this district should be approached with a view to their giving a strip of land sufficient to make a footpath for the children.

K.70. Eastry Rural District Council, minute of 20 November 1928⁹²:

Sholden

The Clerk was directed to write to the Deal Corporation suggesting that their Surveyor should meet this Council's Surveyor with the County Surveyor with a view to considering the question of improving the state of the above road⁹³.

K.71. Eastry Rural District Council, minute of 18 December 1928⁹⁴:

Church Lane Sholden

The Chairman reported that he had met the County Surveyor with the Deal Surveyor at Church Lane Sholden, and that the County Surveyor had agreed to take the water from the main road into a hollow and make a cinder path, that the County Council and the Deal Town Council would supply two men each and that this Council would supply the necessary clinker.

It was Resolved that the Chairman's action be approved.

K.72. **Conclusion:** Following a brief discussion by the Wingham Highways Board in 1867, the status and repair of Church Lane was considered by the Eastry Rural District Council over a period of 30 years, from 1899 to 1928.

K.73. The position of the council evolved during that time — from initial denial that the way was a road repairable at public expense, to acceptance that it was an ancient highway (i.e. one predating the Highway Act 1835) and repairable.

K.74. The key meeting is that of 3 July 1906 (para.K.40 above), at which the clerk to the council reports that, first, the Act enabling the establishment of the Dover and Sandwich turnpike, and which enabled the creation of a new, more direct, road between Upper Deal and Sholden (now London Road), did not provide for Church Lane to be bypassed or stopped up. And secondly, that the road had been used by the public since the 1835 Act and the council was liable to repair it.

K.75. Subsequently, the council accepted its duty to repair Church Lane (that duty was not entirely respected by Deal Borough Council, which was liable to repair the half of Church Lane within Deal). That Church Lane was recognised and repaired as a road is evident from the minutes and reports. See, for example, the complaint from a resident (para.K.45 above) that: 'no provision had been made for kerbing and making up the footpath on the

91 RD/Ea/Am9, p.155 [76].

92 RD/Ea/Am10, p.137 [77].

93 No such road is previously referred to.

94 RD/Ea/Am10, p.153–4 [78–79].

Sholden side of this road and that the road was being made higher than the footpath.’ The council’s surveyor reported (para.K.56 above) that: ‘It would be useless to make a footpath in the existing roadway.’ Indeed, by 1919, a minute records that discussions had taken place with a view to the provision of a separate footpath through the field adjacent to Church Lane (and such a path is recorded on the Ordnance Survey County Series fourth edition map, Illustration xxiv above, revised in 1938).

K.76. Thus these records provide convincing evidence that the Eastry Rural District Council recognised, in time, that Church Lane was a public road repairable at public expense.

K.77. **Points:** 5

L. Finance (1909–1910) Act 1910

L.1. **Date:** 1911

L.2. **Source:** National Archives

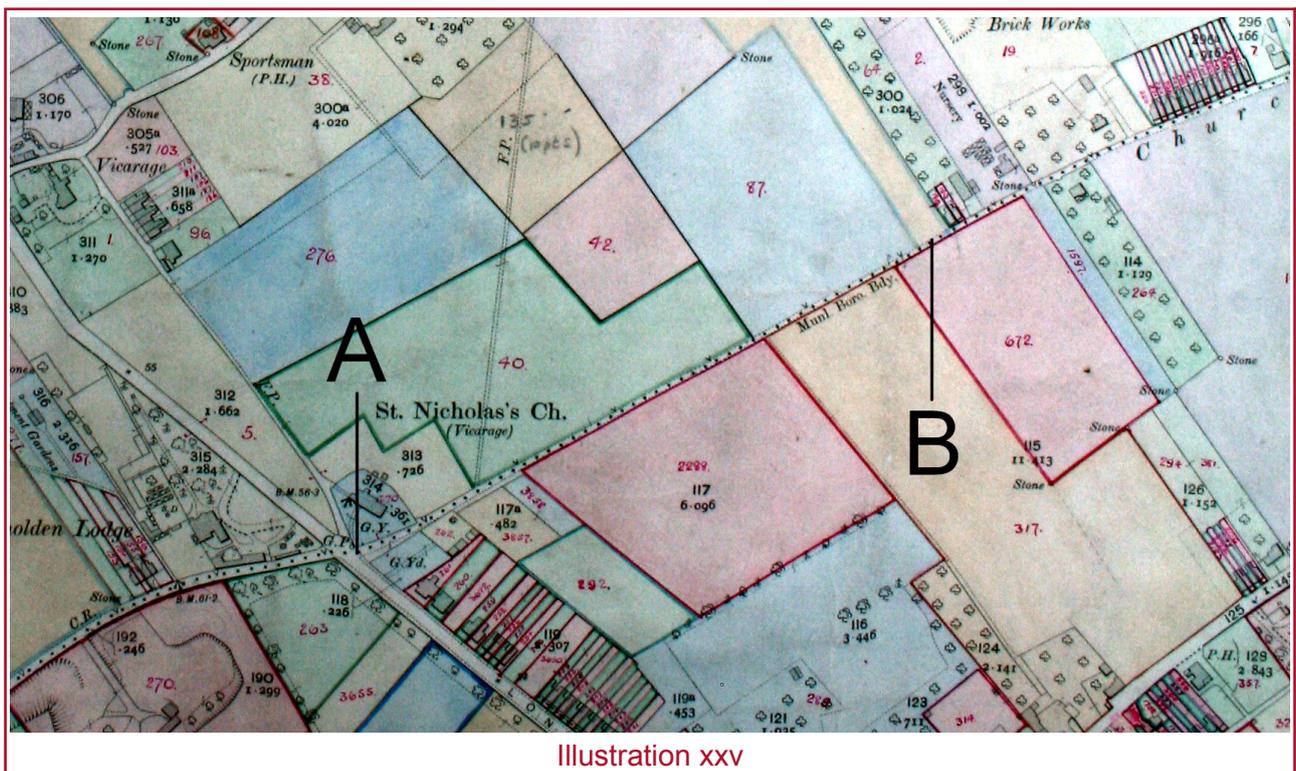


Illustration xxv

L.3. **Description:** original scale: 1:2,500; orientation: unchanged.

L.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’. This is because s.35 of the 1910 Act provided,

No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.

A highway authority was a rating authority.

L.5. That 'white roads' are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In *Fortune v Wiltshire Council*, HHJ McCahill QC said (paras.753, 770), that:
...the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. ...the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910.

On [appeal](#), Lewison LJ upheld the judgment at first instance, observing (para.71):

The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway.

- In *Robinson Webster (Holdings) Ltd v Agombar*, Etherton J said (para.47) said:
The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. ... The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.
- In *Commission for New Towns v JJ Gallagher Ltd*, Neuberger J found (para.106) that:
The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. ... Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].
- In *R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs*, Walker J said (para.65) that:
The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.

L.6. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

L.7. Church Lane is excluded from valuation — it is a 'white road'.

L.8. **Conclusion:** The exclusion of Church Lane from valuation is significant evidence that it was recognised, at the time, to be a vehicular or (possibly) bridle road. However, taken with contemporary evidence of the records of Eastry Rural District Council, it is clear that the exclusion here is predicated on the way being a public road.

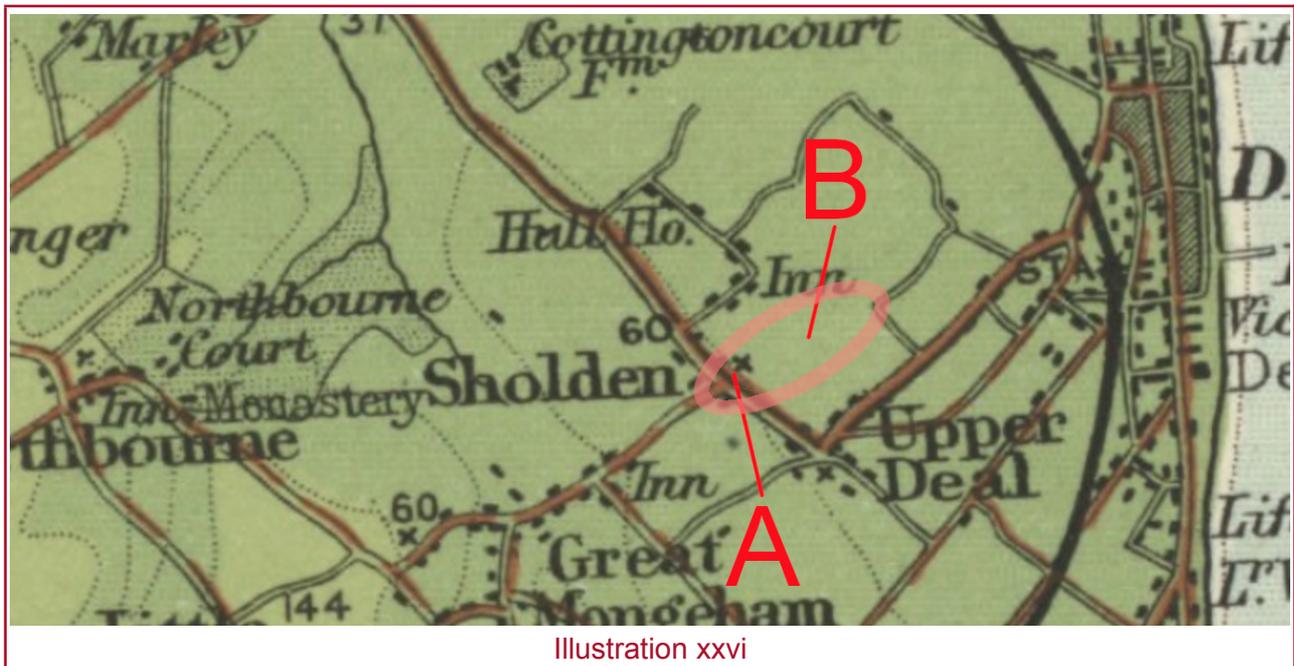
L.9. **Points:** 5

M. Bartholomew's half inch map

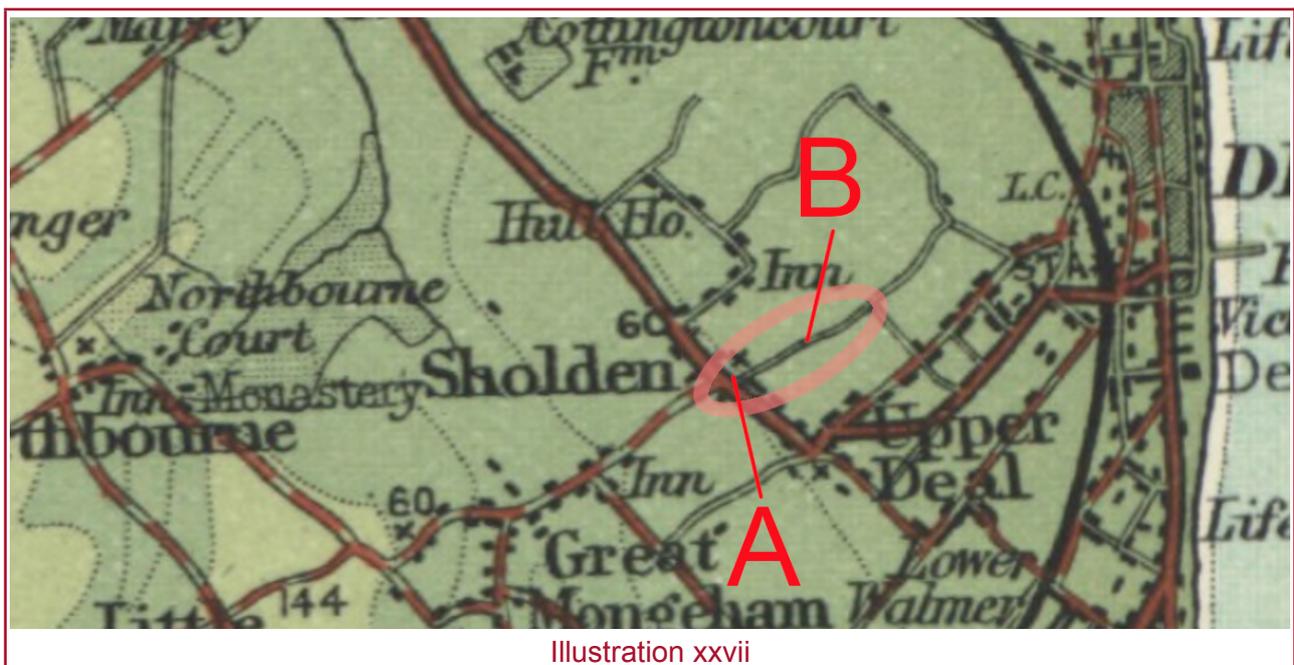
M.1. **Date:** 1904 and 1922

M.2. **Source:** National Library of Scotland⁹⁵

Bartholomew's half inch map: 1904

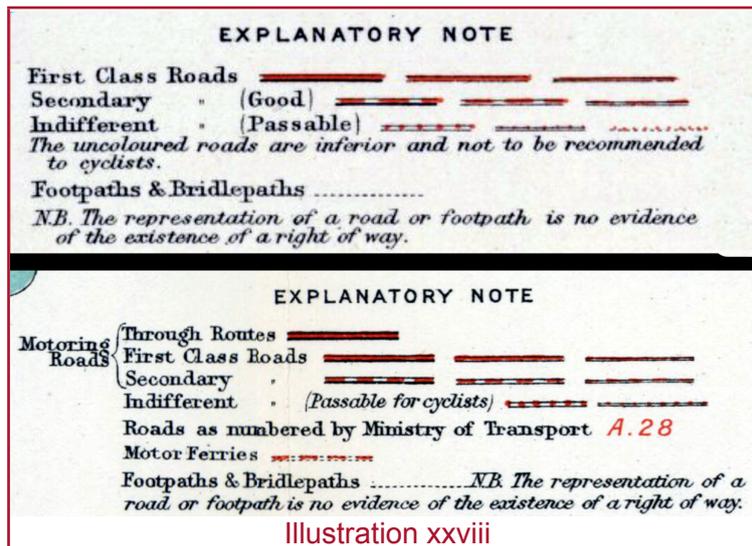


Bartholomew's half inch map: 1922



95 maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: keys



M.3. **Description:** Original scale: half inch to one mile (1:126,720); orientation: unchanged (north).

M.4. The application way is not shown on the 1904 map, but is depicted on the 1922 map as an 'indifferent road', but not suited to cyclists.

M.5. **Conclusion:** Paragraph 12.41 of the consistency guidelines⁹⁶ notes that:

'current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.'

However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists.

M.6. **Points:** 1

N. Definitive map and statement and highway inspectors' map

N.1. **Date:** 1949–51, 1953

N.2. **Source:** Kent County Council⁹⁷

⁹⁶ Planning Inspectorate: September 2015: www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines.

⁹⁷ Council records: FP/R228.

Parish map, Sholden

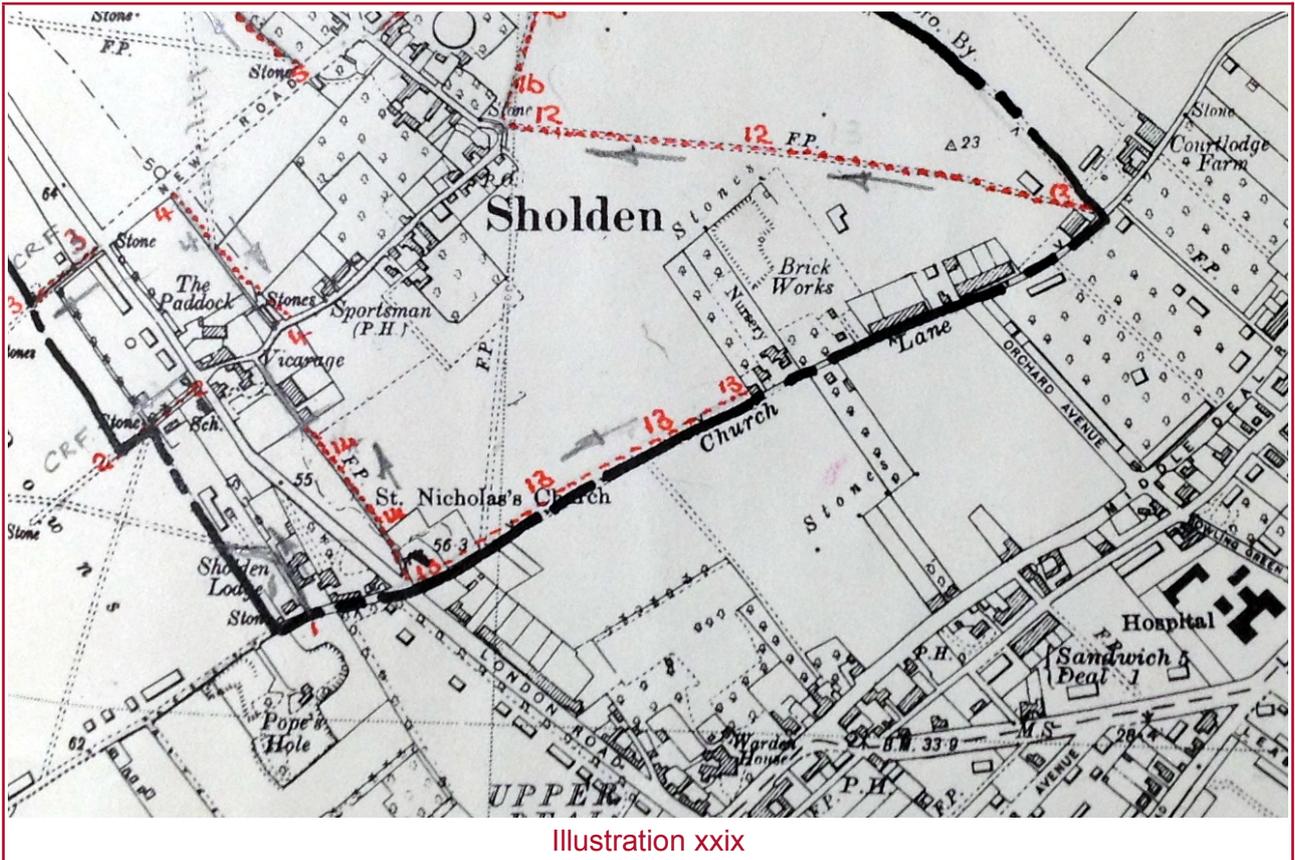


Illustration xxix

Parish statement, Sholden

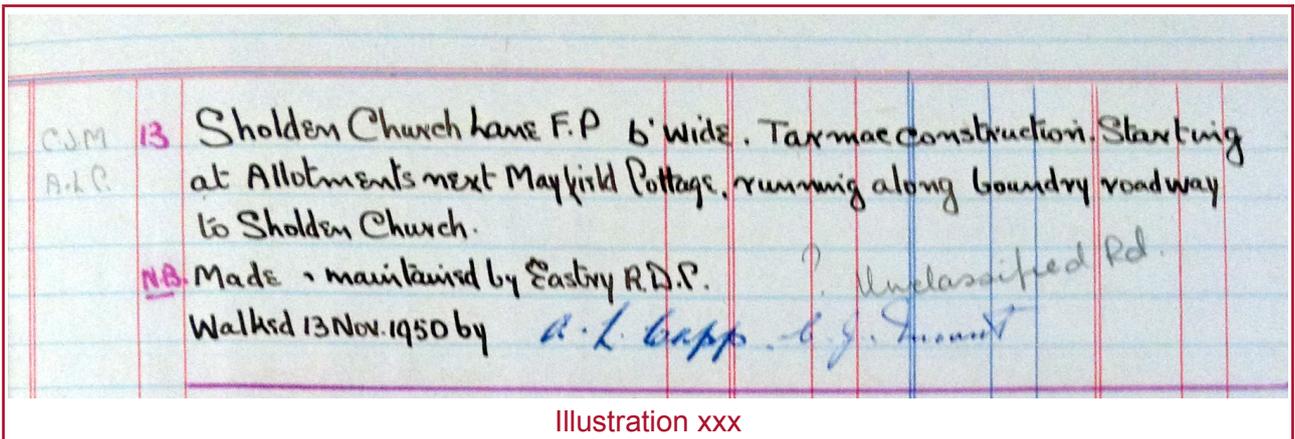


Illustration xxx

Parish map, Deal

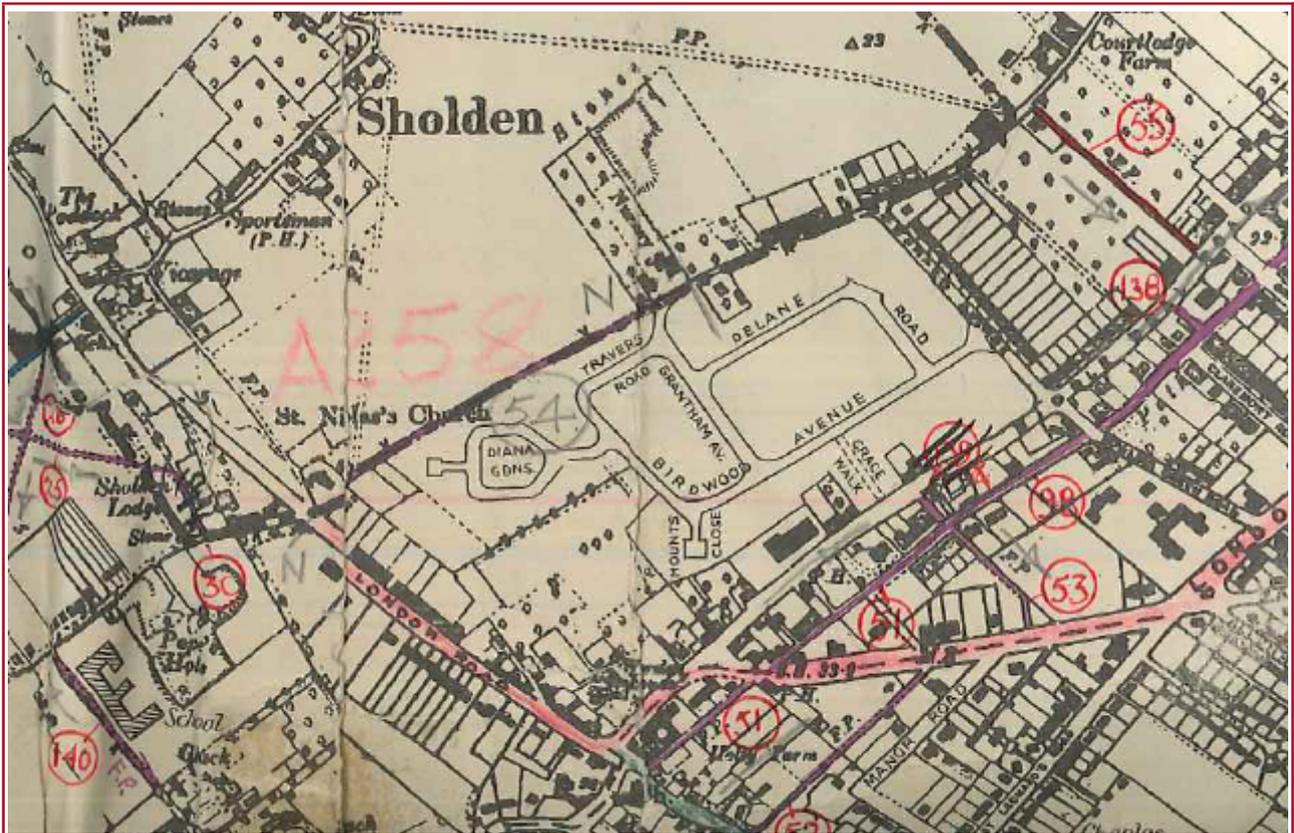


Illustration xxxi

Parish statement, Deal

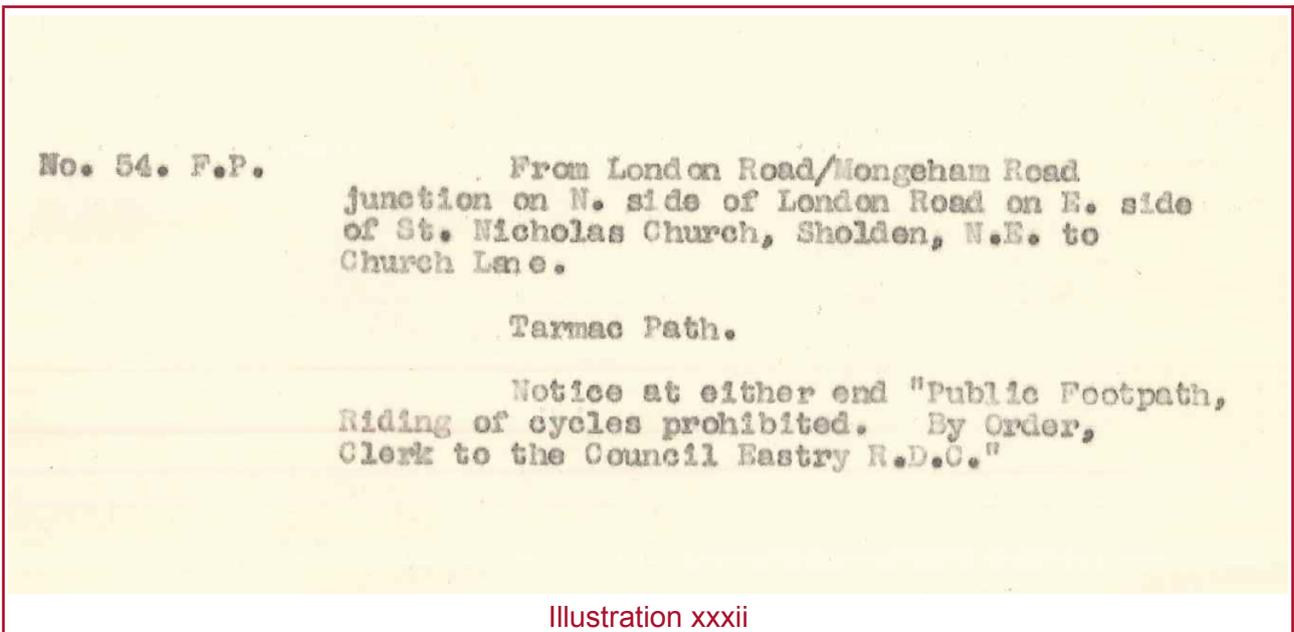


Illustration xxxii

Highway inspectors' map

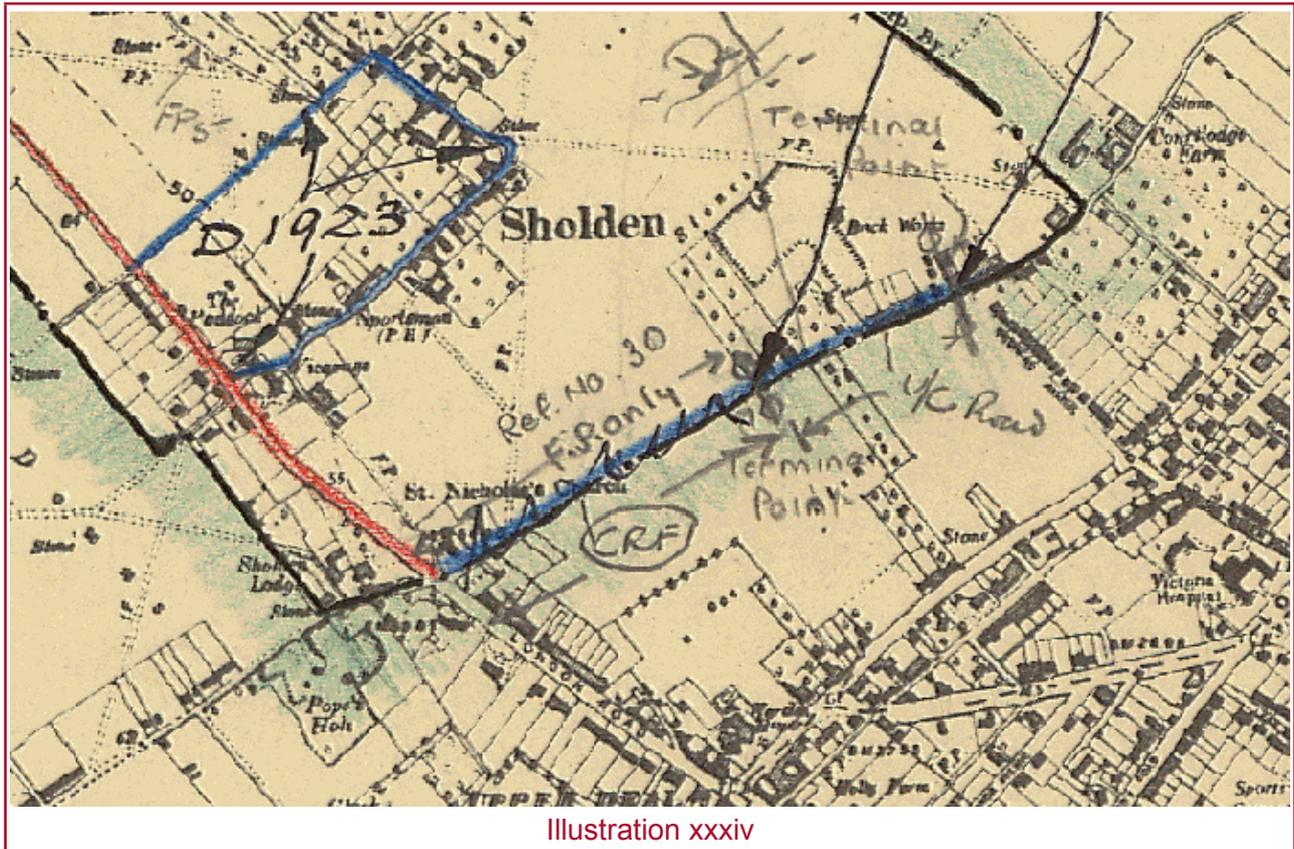


Illustration xxxiv

N.3. **Description:** The application way was not recorded in the parish map prepared by Sholden Parish Council pursuant to s.28 of the National Parks and Access to the Countryside Act 1949. The council did, however, identify the field footpath adjacent to Church Lane as a candidate public footpath, which was described as:

13 Sholden Church Lane F.P. 6' wide. Tarmac construction. Starting at Allotments next Mayfield Cottage, running along boundary roadway to Sholden Church.

N.B. Made & maintained by Eastry R.D.C.

Walked Nov. 1950 by A. L. Capp C. G. Mount

A pencil annotation of unknown provenance is marked: '? Unclassified Road'.

N.4. However, the application way was identified as a footpath in the parish map prepared by Deal Borough Council, and it is understood that it was recorded as such in the county draft map.

N.5. In the slightly later highway inspectors' map of 1953, considered to record publicly-maintainable roads, the application way is coloured blue (meaning publicly maintainable) but marked 'Ref. no. 30', 'F.P. only' and CRF (carriage road footpath).

N.6. **Conclusion:** The entry in the parish statement for Sholden might well be mistaken for Church Lane itself, but the marking on the map, and the description, make clear that it refers instead to the footpath provided inside the field, owing to the narrowness of Church

Lane itself. The parish council did not seek to record Church Lane as a footpath. But Deal Borough Council did.

N.7. On the draft definitive map for Sholden, Church Lane is coloured yellow, indicating a maintained road, while parish candidate footpath 13 has been excluded (presumably because it was a permissive path, provided by permission of the landowner: see paras.IV.K.56 and IV.K.67 above).

N.8. Additionally, a pencilled arrow points to the yellow colouring of Church Lane. This was typically associated with a note attached to the map which stated that the road in question was a maintained county road — although no such note endures in this particular case.

N.9. Moreover, on the highway inspectors' map of 1953, the application way is marked as publicly maintainable, but also marked both as a footpath and as a carriage road footpath.

N.10. These post-War records suggest that, by this era, the application way was primarily being used as a footpath, but its legacy as a public road was causing some uncertainty to those who were required to record its status for the purposes of the definitive map and statement and the map of publicly-maintainable roads.

N.11. **Points:** 0